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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM (M) 85/2020**

RANA KHAN

..... Petitioner

Through: Mr. Bahar U. Barqi and Mr. Maroof
Ahmad, Advocates. (M:9899186420)

versus

TASLEEM KHAN

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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27.01.2020

CM APPL. 3041/2020 (exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM (M) 85/2020 & CM APPL. 3042/2020 (stay)

2. An advance copy of this petition is stated to have been served on the Respondent by way of speed post. The receipt has been placed on record. However, none appears on behalf of the Respondent.

3. The present petition challenges the impugned order dated 12th December, 2019, by which the Petitioner's/Defendant's (*hereinafter*, "*Defendant*") applications seeking recall of the orders dated 28th May, 2019 and 9th April, 2019 were dismissed by the Trial Court.

4. The background is that the Respondent/Plaintiff (*hereinafter* '*Plaintiff*') filed a suit for specific performance, possession and permanent injunction in respect of Flat No.41-C, Janta Flat, Shastri Park, Delhi-110053, second floor to third floor with roof rights, built up property, admeasuring 50 sq. Yards (*hereinafter*, "*suit property*"). Issues were framed in the suit on

18th February, 2017. One of the main issues is whether the Plaintiff has misused the blank signed documents of the Defendant. The Plaintiff appeared as a witness in the matter and on 28th May, 2018, but due to non-appearance of the counsel for the Defendant, the Court closed the right of the Defendant to cross-examine the Plaintiff. Thereafter, vide order dated 9th April, 2019, the evidence of the Defendant was also closed. The Defendant sought recall of these orders by way of the applications which were dismissed by the Trial Court vide the impugned order dated 12th December, 2019.

5. Mr. Barqi, Id. counsel appearing for the Defendant, submits that the suit property is a Janta Flat and the Defendant is of meagre means. He submits that the counsel for the Defendant did not inform her of the various orders passed by the Court and it was only in June, 2019 that she received intimation about the matter having been listed for final arguments. Id. counsel submits that if the right to cross-examine is not given to the Defendant and the Defendant's evidence is not permitted to be led, she may be deprived of her property.

6. This Court has perused the order sheets in the matter, as also the pleadings. The case of the Plaintiff is that the Defendant had agreed to sell the suit property for a sum of Rs.20 lakhs out of which Rs.4.5 lakhs were paid in advance. This fact is disputed by the Defendant who alleges that the Plaintiff had got blank documents signed by her for the purpose of converting the suit property to freehold property.

7. The order sheets show that since the framing of issues, only the examination-in-chief has been recorded and the matter has been repeatedly adjourned on various dates for cross-examination. On 28th May, 2018, after

the Defendant's counsel's repeated non-appearance, the Court closed the right of the Defendant to cross-examine the Plaintiff. The Defendant herself was personally present on all these dates and hence, the Defendant was diligent in the matter. The explanation given by the Ld. Counsel that there was default by the counsel, is clearly evident from the order sheets. Even subsequently, due to non-payment of costs, the Court has closed the right of the Defendant to lead evidence.

8. Considering the socio-economic strata of the Defendant, it is deemed appropriate that one last opportunity be given to the Defendant to cross-examine the Plaintiff and to lead her own evidence. Subject to payment of Rs.15,000/- as costs, the Defendant is being given one last and final opportunity in the interest of justice. The cross-examination of the Plaintiff shall now be conducted on 7th February, 2020 and the Defendant's evidence shall be led on one day i.e., 8th February, 2020.,. If the Plaintiff is aggrieved by this order, he is permitted to approach this Court. Costs to be paid on or before the next date before the trial court.

9. The present petition is disposed of in the above terms. All pending applications are also disposed of. *Dasti*.

PRATHIBA M. SINGH, J.

JANUARY 27, 2020

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