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

+ **CM(M) 108/2020 and CM APPL. 3651/2020**

RAJESH GIRI

..... Petitioner

Through: Mr. Abhishek Kumar, Advocate (M:
9811074290).

versus

KRISHNA VENI

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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29.01.2020

1. The present petition challenges the impugned order dated 30th May, 2019 by which the Plaintiff's evidence has been closed and the matter was adjourned for Defendant's evidence. The Plaintiff, who is the Petitioner before this Court filed a suit for specific performance of agreement to sell dated 14th August, 2013 in respect of the property bearing No. C-8/168, Yamuna Vihar, Delhi-110053. Issues were framed in the suit on 17th September, 2014. The Plaintiff had filed a list of witnesses consisting of 8 witnesses. According to ld. counsel for the Plaintiff, four of the witnesses were examined and an application was moved by his client for recalling of PW1. The same was rejected by a previous order of the Trial Court and was thereafter allowed subject to costs on 2nd April, 2019 by the ld. Single Judge of this Court in CM(M) 517/2019.

2. The operative portion of the said order reads as under:-

“The other documents that the petitioner seeks to place on record are the certified copies of the proceedings in CS(OS) 1958/2011 and CS No. 209/201.6 as, already observed herein above taking into, account the factum

that the submission of Income Tax Return and the certified copies of proceedings in the two suits no. CS(OS) 1958/2011 and 209/2016. As the authenticity thereof cannot be doubted in view of their being a part of office record, in the interest of justice, the prayer is allowed subject to payment of costs of Rs.40,000/- which would include the costs of Rs.2000/- as imposed vide the order dated 16.1.2019. Further, only one opportunity is given to the plaintiff i.e., the petitioner herein to produce the documents and prove the same in evidence on a date to be fixed by the learned Trial Court which shall be so fixed only on the payment of costs as directed herein above.”

3. Despite the permission being granted to recall PW1, subject to payment of costs of Rs. 40,000/- the Plaintiff did not avail of the same and continued to lead the evidence of the other witnesses. On 11th April, 2019, PWs 5, 6 and 7 were present before the Trial Court. PW5 was examined in part and was bound for the next date. PW6 was examined and discharged. Due to paucity of time, PW-7 was not examined. Thereafter, the Court passed order dated 11th April, 2019, which reads as under:

“Examination-in-chief of PW-5 Sh. Sushil Kumar Kala, Judicial Assistant from RKD (Original) Branch, High Court of Delhi, is recorded partly. It has been reported by the witness that the complete details of the summoned record were not provided to him with his summons and therefore, he has produced the case file of CS-416/16, inadvertently, instead of the summoned record of CS (OS) No.1958/11, titled as, 'Rajesh Giri vs. Poonam Ahuja'. The complete details of the aforesaid case file are provided to the witness, by the Ld. counsel for the plaintiff. The witness is bound down for the next date of hearing.

PW-6 Sh. Ankit Kumar, Asstt. Ahlmad from the court of Ms. Aditi Garg, Ld. M.M. (NE), is examined and

discharged.

PW Sh. Dinesh Gupta is also present. But, he is discharged unexamined today, due to paucity of time.

The Ld. counsel for the defendant has filed a copy of the order, dated 02.04.2019, passed by the Hon'ble High Court of Delhi, in CM(M) No.517/19, whereby, the plaintiff has been granted one opportunity to produce the documents and to prove the same in evidence, subject to payment of a cost of Rs.40,000/- to the defendant. It has been further directed by the Hon'ble High Court that the date for evidence of the plaintiff shall be fixed by the trial court, only after payment of the cost.

The Ld. counsel for the plaintiff has not paid the cost of Rs.40,000/- to the defendant, in compliance of the orders of the Hon'ble High Court, dated 02.04.2019, today. He has sought some time to pay the said cost.

On request of the Ld. counsel for the plaintiff, adjourned for payment of the entire cost and for entire remaining plaintiff's evidence, as last & final opportunity, on 30.05.2019."

4. By the impugned order, the Trial Court has closed the entire evidence of the Plaintiff due to none payment of costs for recalling of PW1. The grievance of the ld. counsel for the Plaintiff is that if the costs were not paid, only recall of PW-1, could have been closed and the evidence of the other witnesses ought not to have been closed. He submits that on 11th April, 2019, PW 7, Dinesh Gupta, who was present ought to have been permitted to be examined. His affidavit in evidence is already on record.

5. After hearing ld. counsel for the Plaintiff, it is clear that the matter is unnecessarily being delayed for one reason or the other. Since issues were framed in 2014, it has been more than four years, and the Plaintiff's evidence has not concluded. Repeated indulgence shown by the Court has

also not been availed of for recalling PW1. There is, however, no doubt that order dated 2nd April, 2019 in CM(M) 517/2019 related only to PW1. Since costs in respect of recalling PW1 have not been paid, the right to recall PW1 stands closed. In so far as the remaining witnesses are concerned, there are only two witnesses according to ld. counsel for the Plaintiff – i.e. a Record Keeper of the Delhi High Court and Mr. Dinesh Gupta. In so far as the Record Keeper of the Delhi High Court is concerned, the Plaintiff is permitted to place on record the certified copies of the judicial record and the same shall be exhibited. There is no requirement to call the official witness from the High Court. In so far as Mr. Dinesh Gupta is concerned, the Plaintiff is permitted to lead evidence of Mr. Dinesh Gupta, subject to payment of Rs. 10,000/- as costs.

6. At that stage, it is informed by ld. counsel for the Plaintiff that a transfer petition has been filed by the Plaintiff before the District Judge seeking transfer of the suit from one ADJ to another. The pendency of the transfer petition shall not come in the way of the Plaintiff leading evidence of Mr. Dinesh Gupta. Only one date shall be fixed for examination and cross examination. No further opportunity shall be granted and no adjournment shall be granted on the next date. The costs shall be tendered to the Defendant on the next date.

7. The petition and pending application stand disposed of. *Dasti*.

PRATHIBA M. SINGH, J.

JANUARY 29, 2020
MR