

\$~35

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

+ **CM(M) 103/2020**

RAM KISHAN & ANR Petitioners

Through: Mr. K. Sunil, Ms. Chinky Ojha and
Mr. Anuj Ranjan, Advocates.
(M:8588060464)

versus

DR SHROFFS CHARITY EYE HOSPITAL & ORS Respondents

Through: Mr. J.K. Bhola and Ms. Kimmi
Barara, Advocates. (M:9811211146)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **30.01.2020**

CM APPL. 3563/2020

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

CM(M) 103/2020 & CM APPL. 3562/2020

2. The present petition has been filed challenging the orders dated 14th October, 2019 and 15th October, 2019 passed by the Id. Civil Judge which, in effect, closes the right of the Petitioners/Defendants (*hereinafter*, “*Defendants*”) to cross-examine the Respondents’/Plaintiffs’ (*hereinafter*, “*Plaintiffs*”) witness - PW-1.

3. Plaintiff No.1 – Dr. Shroff’s Charity Eye Hospital, along with the other Plaintiffs and trustees, has filed the suit for possession and recovery of damages/*mesne* profits against the Defendants - Mr. Ram Kishan and Mr. Sri Kishan. Issues have been struck way back on 21st March, 2012, which read as under:

“1. Whether the suit is barred by Section 50 of DRC Act? OPD

2. Whether plaintiff has any cause of action to file the present suit? OPD.

3. Whether plaintiff has any locus standi to file the present suit? OPD.

4. Whether "New Trust" is a legal or valid trust? OPP.

5. Whether suit of the plaintiff is bad for non joinder of necessary party? OPD.

6. Whether plaintiff is entitled for decree of possession as prayed for? OPP.

7. Relief.

No other issue arises or pressed for. Put up for PE by way of affidavit with 10 days advance copy to the opposite party on 05.06.2012. List of witnesses be filled within 15 days from today.”

4. Since the framing of issues, PW-1's examination-in-chief was conducted on 25th April, 2016. Thereafter, repeated opportunities have been given to the Defendants to cross-examine the Plaintiffs' witness, however, finally, vide order dated 14th October, 2019, their right to cross-examine PW-1 was closed. The Defendants moved an application seeking recall of the order dated 14th October, 2019 which was rejected on 15th October, 2019.

5. The contention of the Id. counsel for the Defendants is that the delay since 2012 has been caused by the Plaintiffs themselves as, for a period of four years, the examination-in-chief was also not conducted. He submits that on all the three occasions when the right to cross-examine was closed, it was not due to the fault of the litigant but the counsel who was stuck in other cases. It is submitted that even on the last occasion, i.e., on 14th October, 2019, when the court waited till 3:00 p.m., the reason for non-appearance was because the counsel was busy in another cross-examination in a matter

before the Metropolitan Magistrate. Thus, he submits that the Defendants ought not to be punished for the non-appearance of the counsel. It is prayed that one last opportunity be granted to examine PW-1.

6. On behalf of the Plaintiffs, various orders passed by the Court are shown to submit that the Trial Court was repeatedly lenient with the Defendants and opportunities for cross-examination were granted subject to payment of costs on various occasions including on 22nd February 2019, 31st July, 2019, 3rd October, 2019, etc.

7. Ld. counsel submits that despite repeated indulgence being shown, the Defendants chose not to cross-examine PW-1 and hence, no further opportunity ought to be granted.

8. The Court has perused the order sheets placed on record. The present petition is dated 6th December, 2019, however, on 23rd November, 2019, i.e., prior to the filing of the petition itself, the Defendants' evidence has commenced in the matter. DW-1 has been cross-examined in detail on 23rd November, 2019 and the evidence of DW-1 has also been closed. The evidence of DW-2 is yet to be adduced and an explanation is stated to have been called for as to why his evidence is even required.

9. A perusal of the order sheets also shows that repeated opportunities were given on several occasions to the Defendants to cross-examine PW-1. The opportunities were, however, not availed of. Finally, on 14th October, 2019, the Court recorded as under:

"Today the matter is fixed for Cross Examination of PW-1 at 2:00pm, court has been waiting since last one hour for the counsel for defendants.

Perusal of record shows that vide order dt. 21.07.2018, the right of the defendant to cross examine

PW-1 was closed which was again reopened vide order dt. 22.02.2019.

On 31.05.2019, again right of the defendant to cross examine PW-1 was closed which was again reopened vide order dt. 31.07.2019.

Vide order of the last date, one last and final opportunity was given to the defendant to cross-examine PW-1 court has waited till 3pm for the counsel for defendant to appear and cross examine PW-1 previous cost of Rs. 3000/- is yet to be paid by defendant.

Keeping in view of the above facts, court is of the opinion that defendant is not interested in Cross-Examine PW-1. Hence, the right of the defendant to Cross-Examine PW-1 is hereby closed.

Put up for DE on 23.11.2019.”

10. An application was filed for seeking recall of the said order which was rejected by the Court. The Court has also perused the issues and the same shows that onus of almost all the issues is on the Defendants. The Defendants have also led their evidence in the matter. Under these circumstances, considering the fact that the suit has been pending since 2009 and it is a suit for possession filed by a hospital, this Court is not inclined to give any further opportunity to the Defendants to cross-examine PW-1. However, if the Plaintiffs choose to lead any rebuttal evidence in the matter, the Defendants shall be entitled to cross-examine the Plaintiffs' witnesses.
11. The petition is disposed of in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH, J

JANUARY 30, 2020/dj