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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM (M) 695/2019 & CM APPLs. 21376-77/2019**

RAJEEV GARG

..... Petitioner

Through: Mr. Rachit Batra, Advocate (M-9818383584)

versus

GANPAT RAI

..... Respondent

Through: Mr. Sanjeev Kumar, Advocate (M-9312577092)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **07.01.2020**

1. The present petition challenges the impugned order dated 1st December, 2018, by which the Petitioner's application to cross-examine AW-1 – Mr. Ganpat Rai has been dismissed by the Trial Court and order dated 12th April, 2017 has been sustained.
2. An *ex-parte* eviction order was passed in favour of the Petitioner on 16th February, 2012 and the Respondent/Tenant (*hereinafter*, "Tenant") took an objection that he was never served in the eviction petition. The tenant moved an application for setting aside the *ex-parte* decree. Since the issue of service was raised, vide order dated 15th October, 2013, evidence was directed to be led only in respect of the issue as to whether service had been effected on the Tenant or not. The said order reads:

"The application u/o 9 Rule 13 CPC has been filed by the tenant/application Ganpat Rai taking two fold objections regarding service of the petition on him and also on merits. It is stated in the application that the tenant/applicant was never served with the summons of the petition. The eviction order passed against him has also been challenged on merits but that is not relevant

to be discussed here.

In reply to the aforesaid application, the petitioner /landlord has stated that tenant was duly served and one counsel Sh. Virender Singh also appeared on his behalf, therefore, the tenant is falsely taking the plea regarding non-service of him.

Ld. Counsel for tenant submits that tenant/applicant was neither served nor he authorized any counsel to appear on his behalf. He further submits that the petitioner/landlord has precurred the false report on the summons.

After going through the entire file, it is directed to both the parties to lead their evidence on the point of service of summons on the tenant/applicant. The tenant shall first begin with his evidence. It is specified that no evidence shall be led by the parties on merits of the main petition.

The tenant/applicant is directed to file affidavit in evidence with supply of advance copy of the same to the opposite party.

Put up for AE on 07/11/2013.”

3. Despite several years having passed since the said order, till date, evidence on the issue of service has not concluded. The Tenant examined AW-1 – Mr. Ganpat Rai, who was cross-examined by the Petitioner on 28th September, 2015, and further cross-examination was deferred to 12th January, 2016. The matter was thereafter continuously adjourned and on 12th April, 2017, since the counsel was not present to cross-examine AW-1, the opportunity to cross-examine AW-1 was closed. Thereafter, an application was moved by the Petitioner seeking re-call of the order dated 12th April, 2017, which was dismissed vide the impugned order dated 1st December, 2018.
4. Ld. counsel for the Petitioner submits that on 12th April, 2017, the ld.

counsel was held up in Patiala House Courts and accordingly, could not reach. Thus, his client ought not to suffer because of his absence. He further submits that he had in fact reached the Court at 10:00 a.m., however, since the Presiding Officer was on short leave, he had thereafter left to Patiala House Courts. Thus, there has been no negligence on behalf of the counsel.

5. Ld. counsel for the Tenant, on the other hand, submits that the issue being only one of service and whether the application under Order IX Rule 13 CPC deserves to be allowed, the scope of the evidence is very limited. It is submitted that AW-1 has already been cross-examined in detail on 28th September, 2015 and thereafter the evidence of two witnesses on behalf of the Petitioner has also been recorded. Currently, the third witness is being examined. Ld. counsel submits that, at this stage, if the cross-examination of AW-1 is again permitted, the matter would be delayed as the Tenant is a senior citizen. Thus, the present petition ought not to be allowed.

6. The Court has considered the impugned order dated 1st December, 2018. In the impugned order, the Id. Trial Court has recorded as under:

"I have also gone through the cross-examination of AW1 Sh. Ganpat Rai which shows that the cross-examination was conducted by Ld. counsel for the petitioner Sh. Ramit Malhotra exhaustively on 28.09.2015. And further cross examination of AW-1 Sh. Ganpat Rai was deferred for 12.01.2016. It is also pertinent to mention that AW1 Sh. Ganpat Rai is the first witness on behalf of the respondent for the purposes of application U/O 9 R 13 CPC. Other witnesses are yet to be examined by the respondent in the application U/O 9 R 13 CPC and the petitioner is yet to start his evidence on the application U/O 9 R 13 CPC.

Perusal of record as well as order dated 12.04.2017

manifestly shows that ample opportunities have already been granted to the petitioner to cross examine the AW-1 Sh. Ganpat Rai and record also shows that Ld. Counsel for the petitioner has already cross examined the AW-1 Sh. Ganpat Rai on 28.09.2015 and the right of the cross examination was closed by the Ld. Predecessor of this court only on 12.04.2017 after giving ample opportunities.”

7. The Trial Court has clearly observed that sufficient opportunity was given for cross-examination of AW-1. The last cross-examination of AW-1 was conducted on 28th September, 2015. More than three years have passed since the said date and the application under Order IX Rule 13 CPC continues to remain pending. For whatever reason, the Petitioner has not appeared to conduct the cross-examination of AW-1 diligently. The Petitioner’s right to cross-examine AW-1 has now been closed by the Trial Court. Further evidence of the other witnesses has also been recorded.

8. Accordingly, this Court does not find any error in the impugned order. The scope of the evidence being very limited and since the Trial Court feels that the evidence is sufficient, this is not a case that calls for interference under Article 227.

9. Accordingly, the petition is dismissed and all pending applications are disposed of. The application under Order IX Rule 13 CPC shall now be adjudicated expeditiously.

PRATHIBA M. SINGH, J.

JANUARY 07, 2020

Rahul/TC