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

+ **CM(M) 1689/2019 & CM APPL. 51173/2019**

AJOOBA

..... Petitioner

Through: Mr. Vivek Srivastava and Mr. Milind
Srivastava, Advocates.
(M:9210107303)

versus

SUKHMAL JAIN & ORS

..... Respondents

Through: Mr. R.N. Dubey, Advocate for R-1.
(M:9811179209)
Mrs. Raj Kumari, widow of R-2.
(M:9210357628)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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05.02.2020

1. The present petition arises out of the impugned order dated 7th September, 2019 by which the evidence on behalf of the Petitioner/Defendant No.8 (*hereinafter, "Defendant No.8"*) has been closed and the matter has been put up for final arguments. The order dated 11th October, 2019, by which Defendant No.8's application under Order XVIII Rule 17 CPC, for recall of the order dated 7th September, 2019, was dismissed, has also been challenged.
2. The suit is one for declaration and permanent injunction filed by the Plaintiff i.e., Late Mr. Dhanpal Jain, who is now represented by Mr. Sukhmal Jain.
3. Ms. Raj Kumari, wife of Late Mr. Charan Singh, has appeared before Court pursuant to the notice issued in this petition. She submits that Mr.

Charan Singh passed away on 4th March, 2007 and that she has no concern with the suit property. Accordingly, she is not being impleaded in the suit and does not need to appear in the matter.

4. The submission of ld. counsel for Defendant No.8 is that the only reason why Defendant No.8 was not present for further cross-examination on 7th September, 2019 was because of the demise of his uncle. It is submitted that this fact was again brought to the notice of the Trial Court vide the application under Order XVIII Rule 17 CPC, however, the same was rejected on the ground that the suit is more than ten years old and no further permission to lead evidence can be granted.

5. Ld. counsel for Defendant No.8 has tried to impress upon the Court that the Plaintiff, now represented by Mr. Sukhmal Jain i.e., Respondent No.1, examined almost 16 witnesses who were cross-examined by Defendant No.8 between 20th January, 2018 to 10th January, 2019 i.e., less than a period of one year. This itself, according to ld. counsel, shows that Defendant No.8 has been diligent and has no intention to delay. It was only due to unforeseen circumstances that on two or three occasions he could not appear. The order sheet of the Trial Court has been placed before the Court.

6. On the other hand, ld. counsel for Respondent No.1 submits that the Plaintiff's evidence was closed on 10th January, 2019 and since then, on one ground or the other, Defendant No.8 has been delaying the tendering of evidence. He submits that adjournments have been sought after 25th January, 2017 and even after the affidavit along with the list of witnesses was filed, adjournments were continued to be sought. It is further submitted that on 23rd May, 2019, Defendant No.8 was partly cross-examined and the case was adjourned for want of documents pertaining to the ownership of Mr.

Charan Singh in respect of Khasra No.58. Since then, for one reason or the other, Defendant No.8 has been avoiding appearance before the Court. Costs of Rs.10,000 have also been imposed on Defendant No.8 vide order dated 27th July, 2019.

7. Ld. counsel for Respondent No.1 therefore submits in view of Defendant No.8's conduct, no indulgence is liable to be shown. It is further submitted that Defendant No.8 has filed a list of witnesses containing the names of 21 witnesses which would continue to delay the adjudication of the suit as Defendant No.8 does not seem to have any intention of concluding his evidence.

8. This Court has perused the order sheets of the Trial Court as well as the impugned orders. There is no doubt that the Plaintiff's evidence was closed on 10th January, 2019 and after that, the affidavit in evidence was filed on 8th March, 2019. The first cross-examination of Defendant No.8 took place on 23rd May, 2019 and after the said date, Defendant No.8 has not appeared before the Court on 7th September, 2019. Ld. counsel for Defendant No.8 submits that his client was always present and it was only on the last date i.e., 7th September, 2019 that due to a demise in the family an adjournment was sought.

9. Considering that ld. counsel for Defendant No.8 has also stated before this Court that apart from the said Defendant, only two officials from the SDM's office are to be summoned for the production and marking of the revenue records relating to the suit property, this Court is of the opinion that subject to terms, one last opportunity can be given to lead evidence. Demise in the family would be a valid ground for seeking an adjournment. The same shall, however, be in terms of the statement made before this Court that

apart from Defendant No.8 himself, only two witnesses, listed at Item Nos.10 and 11 of the list of witnesses, shall be summoned.

10. The date for summoning of the said officials shall be fixed by the Trial Court. On the said date, the officials concerned shall appear with the summoned record. If the officials from the SDM office are not summoned along with the records, no further opportunity shall be granted. After the summoning of records and exhibition of the same, the Defendant no.8 shall appear for cross-examination on two continuous dates, to be fixed by the Trial Court.

11. The above order is subject to payment of Rs.20,000/- as costs to the Plaintiff/Respondent No.1. No further opportunity shall be granted to Defendant No.8 to lead evidence in this matter. Evidence shall now be concluded on or before 30th April, 2020. The Trial Court shall also endeavour to dispose of the suit expeditiously.

12. With these observations, the petition and all pending applications are disposed of.

PRATHIBA M. SINGH, J.

FEBRUARY 05, 2020

dj/T