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

+ **CM(M) 468/2018 & CM APPL. 15960/2018**

RAM RATI Petitioner

Through: Mr. S.K. Bhaduri, Mr. Prem Prakesh
and Mr. Madhukar Bansiwala,
Advocates. (M:9810439195)

versus

SATBIR & ANR Respondents

Through: Mr. N.K. Aggarwal & Ms. Shreya.
Mittal, Advocates for R-1. (M-
9818342898)

WITH

+ **CM(M) 1479/2018 & CM APPL. 50777/2018**

RAM RATI Petitioner

Through: Mr. S.K. Bhaduri, Mr. Prem Prakesh
and Mr. Madhukar Bansiwala,
Advocates.

versus

SATBIR & ANR Respondents

Through: Mr. N.K. Aggarwal & Ms. Shreya.
Mittal, Advocates for R-1.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **06.01.2020**

1. The present two petitions arise out of a suit for specific performance filed by Respondent No.1/Plaintiff - Mr. Satbir (*hereinafter*, “*Plaintiff*”), in respect of a Registered Special Power of Attorney (*hereinafter*, “*SPA*”) dated 8th July, 2015. The said suit is pending before the Trial Court and is at the stage of recordal of Plaintiff’s evidence.
2. CM(M) 468/2018 challenges the impugned order dated 22nd February, 2018, by which the applications under Order VI Rule 17 CPC and Order VIII Rule 2 CPC, filed by Defendant No.1/Petitioner - Ms. Ram Rati

(hereinafter, “Defendant No.1”) was rejected by the Trial Court on the ground that the trial in the suit had already commenced.

3. Mr. S.K. Bhaduri, Id. counsel for Defendant No.1, submits that the Plaintiff himself was allowed to place additional documents on record vide order dated 11th August, 2017, when the Plaintiff’s application under Order VII Rule 14 CPC was allowed by the Trial Court. Id. counsel submits that the documents which Defendant No.1 now wishes to place on record came to the knowledge of Defendant No.1 subsequent to the filing of the suit and hence, he ought to be permitted to place the same on record. It is further submitted that the amendment was only to add a preliminary objection which would in any case be established through the documents which have been permitted. The allowing of the amendment and the documents is opposed by Id. counsel for the Respondents on the ground that the trial has already commenced and Defendant No.1 had sufficient opportunity to produce the documents.

4. This Court has perused the applications filed by Defendant No.1. The following documents are sought to be produced by Defendant No.1:

“(i) Copy of complaint dated 20.07.2017 for registration of FIR for damaging crops.

(ii) Copy of complaint dated 07.07.2017 addressed to SHO, P.S. Jaffarpur Kalan, New Delhi.

(iii) Copy of complaint dated 22.06.2017 addressed to DCP, South-west District, Sector-19, Dwarka, New Delhi.

(iv) Copies of FIRs dated 01.05.2014 against Shri Pawan Kumar.

(v) Copy of complaint dated 16.06.2017 against Shri Pawan Kumar.

- (vi) Photos of stolen and damaged crops.*
- (vii) Copy of compensation cheque of crops.*
- (viii) Photocopy of electricity bill.*
- (ix) Copy of kalandra U/s 107/151 Cr.P.C dated 04.10.2017 and the proceedings of the Executive Magistrate.*
- (x) Investigation Report No. 5094 dated 28.08.2017 along with complaint of Sh. Satbir Singh.”*

5. Most of these documents are dated subsequent to the filing of the suit and, in any case, evidence of the Plaintiff is still going on. Accordingly, while Defendant No.1 is permitted to place these documents on record, subject to them being proved in accordance with law, the application for amendment of the written statement is rejected, as trial has already commenced. These documents shall be proved by Defendant No.1 through its own witnesses, as PW-1 and 10 other witnesses have already been examined by Defendant No.1. These additional documents shall not be confronted to the Plaintiff in any manner. In several of the issues, since the onus is on Defendant No.1, it is up to Defendant No.1 to establish these documents and prove the same, subject to any rebuttal evidence which the Plaintiff may choose to lead.

6. CM (M) 1479/2018 has been filed challenging the impugned order dated 22nd November, 2018, by which recalling of PW-1 was not permitted on the ground that PW-1 was cross-examined at length. Thereafter the right of Defendant No.1 to cross-examine PW-1 was closed. Mr. S.K. Bhaduri, Id. counsel, submits that PW-1 was examined on three occasions, however, since the cross-examination was not concluded, the Trial Court simply closed Defendant No.1's right to cross-examine PW-1, without giving any

further opportunity.

7. On the other hand, Id. counsel for the Respondents submits that the counsel conducting the cross-examination unnecessarily took too much time to complete the cross-examination of PW-1, who is a senior citizen. Id. counsel has taken the Court through the evidence recorded on three dates, in which the Trial Court has expressed its view on the manner in which the cross-examination is being conducted. It is further submitted that, in any event, the relevant cross-examination has already been conducted. This is disputed by the Id. counsel for Defendant No.1.

8. Without going into the question as to whether the relevant cross-examination has been conducted or not, it is clear that the Trial Court has closed the cross-examination as too much time was being consumed and several vague/ambiguous/irrelevant questions were also being asked. The Trial Court has expressed its exasperation by recording the manner in which the cross-examination was being conducted. However, PW-1 is a crucial witness. In order to ensure that no injustice is caused, one last opportunity is granted to Defendant No.1 to cross-examine PW-1, subject to payment of Rs.20,000/- as costs, to be paid to the Respondents on the next date before the Trial Court. The cross-examination shall be conducted on one specific date for a period of two hours. The present order is peremptory. If the cross-examination is not concluded on the date fixed, no further opportunity shall be granted for cross-examination. If the Trial Court finds that the recording of the cross-examination is slow, due to the transcription facilities not being available, the Court is permitted to record the cross-examination in an audio device for the purposes of transcribing the same.

9. The additional documents being permitted today shall, however, not

be confronted to PW-1, as directed in CM (M) 468/2018.

10. With these observations, the petitions and all pending applications are disposed of. *Dasti.*

PRATHIBA M. SINGH, J

JANUARY 06, 2020

dj/T