

\$~9

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

+ **CM (M) 1310/2018 and CM APPL. 45069/2018, 32228/2019**

ADITYA BEE

..... Petitioner

Through: Mr. Rakesh Malhotra, Advocate (M:
9810239071).

versus

VIRENDRA KUMAR JAIN

..... Respondent

Through: Mr. Darpan Wadhwa, Sr. Advocate
with Mr. Vedanta Varma, Ms.
Mannat Sandhu and Ms. Cauveri,
Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

%

13.02.2020

1. The present petition has been filed challenging the impugned order dated 30th August, 2018 by which the prayer for DNA testing and for collection of the DNA sample of the Respondent herein/Defendant (*hereinafter 'Defendant'*) has been rejected by the Trial Court. The case of the Petitioner herein/Plaintiff - Aditya Bee (*hereinafter 'Plaintiff'*) is that he is the natural son of the Respondent. Initially, the Plaintiff prayed for seeking a declaration that he is the legitimate son and had also claimed rights in all the assets - moveable and immovable of the Defendant. However, it is submitted by way of an amendment, the only relief now prayed for is that the Plaintiff be declared as the natural son of the Defendant. The Plaintiff is over 30 years of age and is a resident of Italy. The Defendant lives in Delhi and is 86 years of age.

2. The Plaintiff, during the pendency of the suit, moved an application with the following prayer:

“It is, therefore, respectfully prayed that this Hon'ble Court may kindly allow the present application and direct the defendant to give his blood sample for the DNA Test, in the interest of justice.

Any other relief which this Hon'ble Court deems fit and proper in the circumstances of the case may also be passed in favour of the Plaintiff and against the Defendants.”

3. The said application was rejected by the Trial Court after following the law laid down in ***Rohit Shekhar v. Narayan Dutt Tiwari & Anr., 2012 (1) JCC 169***. The observation of the Trial Court is that there was no material on record to support the passing of a direction for conduct of a DNA test. The observations of the Trial Court are as under:

“9. Plaintiff claims to have been born in the year 1979. However, no birth certificate has been filed on record. Further, it has been admitted that his mother got married to an Italian national but the marriage could not survive for long. However, no date of such marriage or its subsequent dissolution has been mentioned. Plaintiff is using the family name of his acknowledged father i.e. 'Bee' which shows that the person who married plaintiff's mother, acknowledged himself to be the father of the plaintiff. Consequently, it was important for the plaintiff to have brought on record documentary evidence to prima facie convince the Court regarding assertions in the plaint.

*10. Learned counsel for the defendant on the other hand has relied on the judgment delivered by Hon'ble High Court of Chhattisgarh, Bilaspur in criminal revision No.601 of 2014 titled as **Smt. Rameshwari Bai & Ors vs. Ishwar Lal Sahu**. Though Learned counsel for the defendant has relied on the above*

judgment to contend that even in the absence of documentary evidence Court can order DNA comparison, Learned counsel lost sight of the fact that even in the judgment being relied upon by him, the Hon'ble High Court has accepted/acknowledged the principle of 'eminent need' which puts us back on the issue of having some verifiable basis to at least prima facie believe in the assertion of the plaintiff.

11. In view of the above discussion and also keeping in view that plaintiff has not been able to make out any reasonable case for the Court to even prima facie believe in its truthfulness, the present application is declined.

12. Put up again on 30.10.2018 for addressing further arguments on the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 as well as under Order VI Rule 17 of the Code of Civil Procedure, 1908.”

4. Ld. counsel for the Plaintiff submits that though in the Trial Court there was no document to establish the relationship between the Plaintiff's mother and the Defendant, the Plaintiff has now placed on record an affidavit of his mother to support his case. He submits that in view of the said affidavit which has now been filed, he may be permitted to approach the Trial Court once again with this affidavit and with any other material to seek a DNA test.

5. On the other hand, ld. counsel for the Defendant submits that the law on the subject is very settled and until and unless a strong *prima facie* case is made out and the Court is of the opinion, that the DNA test is eminently needed, the privacy of any person cannot be compromised.

6. The Court has perused the impugned order, there is no infirmity in the impugned order, on the material as was available, on the date when the

application was considered. Thus, the said order does not warrant any interference. However, the Plaintiff is permitted to approach the Trial Court with any further evidence i.e. the affidavit of his mother and any other further material for claiming further reliefs as may be available in law. Considering the age of the Defendant, it is directed that the adjudication of the suit be expedited.

7. The petition with all pending applications is disposed of in the above terms.

PRATHIBA M. SINGH, J.

FEBRUARY 13, 2020
MR/A.S.