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

Date of Decision : 27.04.2021

+ CM(M) 212/2021

RAJINDER LAL ARORA

..... Petitioner

Through: Mr. Mohit Chaudhary with
Mr.Vardhan Gupta, Advs.

versus

MONU DHINGRA & ORS.

..... Respondents

Through: Mr. Samar Bansal with
Ms.Devahuti Pathak,
Ms.Harsheen Madal Palli and
Mr. Sachin Mishra, Advs.

CORAM:

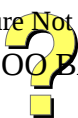
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

This petition has been heard through video conferencing.

1. This petition has been filed by the petitioner challenging the orders dated 05.11.2020 and 06.02.2021 passed by the learned Additional District Judge-03, Patiala House Courts, New Delhi in Suit, being CS No. 839/2017, filed by the respondent no. 1 herein.

2. The Suit has been filed by the respondent no. 1 *inter alia* praying for a relief of declaration, mandatory and permanent injunction in respect of shop No. 45-A, Ground Floor, Khan Market, New Delhi, claiming the petitioner herein to be a licensee in the said shop.

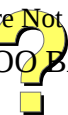


3. The petitioner, on the other hand, filed his Written Statement denying such claim of the respondent.

4. Issues in the Suit were framed on 09.10.2018 and the parties were directed to file their list of witnesses within two weeks. A Local Commissioner was also appointed for recording of the evidence of the parties. The respondent no. 1 led his evidence and the same was closed on 21.12.2019. By the said order, the petitioner's evidence was also directed to be recorded before the Local Commissioner for which purpose the parties were to appear before the Local Commissioner and the Suit was listed for further hearing on 01.04.2020.

5. On 26.02.2020, on an application of the respondent no. 1, petitioner's evidence was closed on the submission of the respondent no. 1 that despite repeated opportunities, the petitioner had not been approaching the Local Commissioner for fixing the date for recording his evidence.

6. The above order dated 26.02.2020 was recalled by the learned Trial Court vide its order dated 20.08.2020, on the concession given by the respondent no. 1. The petitioner was directed to file the affidavit of "all the four witnesses" within four weeks of the said order. The learned counsels for the parties submit that though there was no list of witnesses filed by the petitioner, orally it was submitted that the petitioner was to examine only four witnesses whose affidavit were to be filed within four weeks as directed by the learned Trial Court.



7. The learned Trial Court further directed that the evidence of all the witnesses of the petitioner, except that of Shri Rajinder Lal Arora shall be recorded by the same Local Commissioner “positively before the next date of hearing.”

8. The petitioner never filed the affidavits of his witnesses nor filed any application seeking enlargement of time for the said purpose before the learned Trial Court. On 05.11.2020, the learned Trial Court granted one last and final opportunity to the petitioner to lead his evidence, subject to payment of cost. It was made clear that in case evidence is not led and cost is not paid by the petitioner, the right of the petitioner to lead evidence shall stand automatically closed. This order, though not earlier challenged by the petitioner, has now been challenged in the present petition.

9. In spite of the above preemptory order, the petitioner did not file the affidavits of his witnesses within the time granted. It is only on 25.01.2021 that the petitioner filed the affidavit of evidence and list of witnesses alongwith three applications before the learned Trial Court. The first being an application for taking the evidence and list of witnesses on record; the second being under Order VIII Rule 1A of the Code of Civil Procedure, 1908 (hereinafter referred to as the ‘Code’) seeking permission to place additional documents on record; and the third being under Section 151 of the Code seeking waiver of the cost.

10. As far as the delay in filing of the affidavit of evidence and the list of witnesses, the petitioner, in his application, pleaded as under:-

“5. That due to the bereavement in the family, the Defendant(s) couldn't approach their counsel for the purpose of preparation of their evidence and therefore, the present delay has occurred.

6. It is a case involving family members, therefore, all attempt was made to maintain family harmony.

7. Furthermore, in the meanwhile, the Plaintiff had filed an Application under Order 6 Rule 17 seeking to amend the Suit which had to be examined before the filing of evidence in the present case.

8. Additionally, it needs to be highlighted that the Supreme Court in Suo Moto Writ (Civil) No.3 of 2020 has extended the limitation period for the purposes of filing, in all proceedings [inclusive of evidence etc]. In view of the above, the Defendants seeks enlargement of time, with relief to take affidavit of evidence of the witnesses on record. Further, summon the witnesses in terms of the list attached with the present Application.”

11. The second application filed by the petitioner seeking permission to place on record additional documents stated the following reasons in support of the application:-

“3. That unfortunately on 26.11.2020, Plaintiffs Father, Sh. H.K.L Dhingra [Brother of Defendant No. 1 & Uncle of the Defendant No. 2 & 3] took heavenly abode. His last words to his brothers were that, "Plaintiff is dishonest and doesn't deserve to be called his son, as he is going contrary to the family arrangement". He also mentioned that, it is for this reason, Sh. H.K.L Dhingra, never

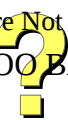


supported the case of the Plaintiff, by entering into witness box.

4. That just before his untimely death, Sh. H.K.L Dhingra [father of the Plaintiff] handed over set of documents, where relevant papers, which goes to the root of the matter and are required to be produced before this Court, for correct appreciation of facts were found. These documents came to in the hands of the Applicant(s) during the meeting(s) in last quarter of 2020, when elder brother Sh.H.K.L Dhingra sat with his other brother to settle the matter, informing that he is convincing Monu Dhingra to withdraw the frivolous Suit.”

12. The third application which was for waiver of the cost, though dismissed by the learned Trial Court by its Impugned Order, is not being pressed before this Court and therefore need not detain this Court.

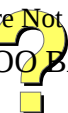
13. I have reproduced hereinabove the reasons given in the application for seeking extension of time to file the affidavit of evidence and list of witnesses as also for seeking permission to file the additional documents on record. It is noted again that the Suit has been filed on 22.07.2017. Issues were framed on 09.10.2018. The respondent no. 1 has already closed his evidence on 21.12.2019. To expedite the adjudication of the suit, in fact, the evidence was recorded before the Local Commissioner appointed by the Court. The petitioner was granted first opportunity to lead evidence vide order dated 21.12.2019. The petitioner did not file his affidavits of evidence within the time granted by the Court nor did he approach the Local Commissioner for fixing of a date. The cause given by the petitioner



was an accident suffered on 05.02.2020, which is beyond the time granted by the Court for filing of the affidavit of evidence. The evidence of the petitioner was, therefore, closed by the learned Trial Court on 26.02.2020. This order was recalled on an application of the petitioner on 20.08.2020, granting four weeks' further time to the petitioner to lead his evidence. The petitioner again failed to avail this opportunity. On 05.11.2020, again further time of six weeks was granted to the petitioner to avail of the opportunity to lead evidence. This opportunity was again not availed of by the petitioner. Only on 25.01.2021, the petitioner filed the affidavit of evidence, however, this time alongwith a list of witnesses as also an application seeking to place on record additional documents.

14. Clearly the intent of the petitioner has been only to delay the adjudication of the Suit and the petitioner deserves no indulgence from the Court. The Impugned Order also takes into account this history of the litigation to reject the prayers made by the petitioner. This Court in exercise of its powers under Article 227 of the Constitution of India does not find any jurisdictional error in the same.

15. The reasons given by the petitioner for non-filing of the affidavit of evidence within the time granted by the learned Trial Court also does not inspire any confidence. The parties have been in litigation since 2017 and the petitioner had already been granted repeated opportunities by the Court to lead his evidence, making it clear that this was the last opportunity granted with a preemptory order resulting in closure of his evidence. However, the petitioner still



did not avail of the opportunity granted. The learned counsel for the respondent no. 1 has pointed out that in the meantime, the petitioner in fact, instituted another suit making allegations against the father of the petitioner, whose death is being used as an excuse for seeking extension of time to file affidavit of evidence. Though it is denied by the learned counsel for the petitioner that any allegations have been made in the said suit against the father of the respondent no. 1, the fact that the petitioner could file another suit but not his evidence in the already pending suit, speaks of the intent of the petitioner.

16. In any case, there is absolutely no justification given by the petitioner for not filing the list of witnesses within the prescribed time and in any case, in accordance with the order dated 09.10.2018 of the learned Trial Court. It is also noted that in the order dated 05.11.2020, the petitioner had stated that he wished to examine four witnesses whose affidavits shall be filed. In the List of Witnesses now sought to be placed on record, the petitioner has listed more witnesses, including ones who he needs courts assistance to be summoned.

17. As far as the application for additional documents is concerned, again the same appears to be merely an attempt to reopen the entire evidence at this belated stage. There is no attempt made by the petitioner to explain why these documents were not filed at an earlier stage in the Suit. The explanation given by the petitioner in the application does not even inspire confidence of this Court. In fact, it appears that the purpose of this application is to put the clock back in the process of adjudication of the suit, which cannot be allowed.

18. The learned counsel for the petitioner further placed reliance on the orders passed by the Supreme Court in *Suo Moto* Writ Petition (Civil) No. 3/2020, extending the period of limitation in various proceedings. In my view, the said order cannot come to the avail of the petitioner in the facts of the present case.

19. I, accordingly, find no merit in the present petition. The same is dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

APRIL 27, 2021/ns/rv/g



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