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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 41/2022 & CM APPL. 2371/2022**

SUSHIL MENDIRATTA Petitioner
Through: Ms. Sonali Malhotra and Ms.
Chhavi Arora, Advs.

versus

SURESH MENDIRATTA Respondent
Through: Mr. Anuj Gupta & Ms. Pinki
Aggarwal, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)
26.04.2022

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1. Order dated 28th September, 2021, passed by the learned Civil Judge, refusing permission to the petitioner, who was the defendant before the learned Civil Judge in CS SCJ 96665/2016, to amend the written statement filed by the petitioner and incorporate, therein, the report of the DNA test of the respondent (the plaintiff before the learned Civil Judge), is assailed in the present proceeding, preferred under Article 227 of the Constitution of India.

2. On 10th March, 2022, learned Counsel for the respondent submitted that the petitioner was seeking to rely on the aforementioned DNA test report essentially to support the petitioner's averment that the respondent was the son of Laxmi Devi.



3. This position is acknowledged by Ms. Malhotra, learned Counsel for the petitioner.

4. The order dated 10th March, 2022 further records the submission of learned Counsel for the respondent that as the averment, to the effect that the respondent is the son of Laxmi Devi, already finds place in the written statement filed by the petitioner before the learned Civil Judge, no amendment of the written statement was necessary and that, therefore, to that extent, the impugned order of the learned Civil Judge did not warrant interference. However, learned Counsel for the respondent agreed to the taking on record of the aforesaid DNA test report, subject to proof in accordance with law.

5. The exact submission of learned Counsel for the respondent, stands recorded in para 2 of the order dated 10th March, 2022, which reads thus:

“2. Without prejudice to his rights and contentions, Mr. Anuj Gupta, learned counsel for the plaintiff, submits that, in the written statements filed before the Trial Court, the defendants have already taken the plea that he, i.e. the plaintiff, is the son of Smt. Laxmi Devi. As such, the occasion to amend the written statements, particularly at the stage of evidence, does not arise. Mr. Gupta, however, states that the plaintiff has no objection to the DNA test report being placed on record before the Trial Court, subject to proof in accordance with law.”

6. Both learned Counsel are agreeable to the present petition being disposed of on the basis of the aforesaid statement recorded by learned Counsel for the respondent. In other words, though this Court does not interfere with the decision not to permit amendment of the written



statement as the plea to that effect that the respondent is the son of Laxmi Devi finds place in the written statement already filed by the petitioner before the learned Civil Judge, the DNA test report is permitted to be taken on record.

7. The submission of learned Counsel for the respondent that the taking on record of the aforesaid DNA test report would be subject to the DNA test report being proved in accordance with law, is also recorded.

8. Ms. Malhotra, learned Counsel for the petitioner, submits, however, that there is no necessity to prove the DNA test report, in view of certain intervening circumstances.

9. This Court does not express any opinion in that regard.

10. It would be open to both sides to advance submissions before the learned Civil Judge regarding the necessity or otherwise of proving the DNA test report in accordance with law before it can be relied upon in evidence.

11. With the aforesaid observation, this petition stands disposed of.

12. Learned Counsel for the respondent submits that the court should award costs in favour of the respondent. This is strongly opposed by learned Counsel for the petitioner.

13. This Court is not inclined in any event to impose costs.



A copy of this order be given *dasti* to both learned Counsel under the signatures of the Court Master.

C. HARI SHANKAR, J.

APRIL 26, 2022

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