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

+ CM(M) 177/2022 & CM APPL. 9554/2022

SH P K JANA & ORS. Petitioners

Through: Mr. Praveen Aggarwal, Adv.

versus

NEERA MALIK & ORS. Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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

% **31.08.2022**

1. Despite the fact that all the respondents stand duly served, Respondent 6 has not chosen to appear.

2. Respondents 3 and 4 were present on the last date of hearing. They have also not chosen to appear, though we are at the fag end of the day and it is now 05:00 p.m.

3. As the issue is short, I have heard Mr. Praveen Aggarwal, learned Counsel for the petitioners and proceed to dispose of the present matter.

4. This petition under Article 227 of the Constitution of India assails order dated 23rd November 2021 passed by the learned Additional District Judge ("the learned ADJ") in CS 209575/2016 (*P.K. Jana & Ors Anr. Through LR's v. Neera Malik & Ors*), whereby the learned ADJ has closed the evidence of the petitioner, as



the Plaintiff 2(a) and the sole surviving plaintiff in the said suit.

5. Mr. Aggarwal points out that the plaintiff sought to lead the evidence of four official witnesses. The witnesses whose evidence the plaintiff sought to lead were the following:

“i) Clerk concerned of the DDA Land & Bldg. Deptt., Vikas Sadan, INA, Sarojini Nagar, New Delhi -110023 with copy of the payments received of lease money as regards to M-38, C R Park, New Delhi -110019.

ii) Concerned Clerk of State Bank of India, Branch Vikas Sadan, INA, New Delhi-110023 with the copy of lease money payments as per the details attached herewith as regards to M-38, C R Park, New Delhi -110019

iii) Concerned Clerk of DVB presently BSES, Alaknanda Zone, Alaknanda Market, New Delhi -110019 as regards to application for connection of electric supply to M-38, C R Park, New Delhi -110019, as per the details attached herewith.

iv) SHO, C.R. PARK, New Delhi -110019, through concerned police official with the copies of the complaint made as regards to M-38, C R Park, New Delhi -110019, as per the herewith.”

6. The learned ADJ issued summons to the aforesaid four official witnesses on 7th March 2020, for 26th March 2020.

7. It appears that, as the COVID-19 pandemic had made inroads into the country by then, the learned ADJ advanced the date of hearing to 21st March 2020 and adjourned the matter for recording of PE on 8th July 2020. As the petitioner was unaware of the passing of the order dated 21st March 2020, the petitioner did not appear on 8th July 2020.



8. After 19th September 2020, the proceedings continued to be conducted through Video-Conferencing till the date of passing of the impugned order dated 23rd November 2021 when, as per Mr. Aggarwal's submission, the impugned order came to be passed.

9. The impugned order dated 23rd November 2021 reads thus:

“CS No. 9575/16

P.K. JANA ORS vs. NEERA MALIK ORS

23.11.2021

Present: Plaintiff no. 2(a) in person

None on behalf of D-1, D-2 and D-5

Shri A.K. Singh, Id. Counsel for D-3 and D-4

Shri Ajit Pratap Singh, Id. Counsel for D-6

Matter is fixed for P.E. However, adjournment sought on behalf of the plaintiff on the ground that witness is not available today.

Heard.

A perusal of the file reveals that plaintiff has been given ample opportunities to conclude PE however same not been concluded till date. Moreover no witness is present today. In view of the above facts, PE is hereby closed.

At this stage, an application moved on behalf of the plaintiff for deleting name of plaintiff no. 2(b). Copy supplied. The application will be considered after conclusion of evidence.

Put up for D.E. on 06.01.2022.

(Geetanjali)
Additional District Judge-05
South-East District Saket Court
New Delhi/23.11.2021”



10. In view of the aforesaid, Mr. Aggarwal submits that the learned ADJ is not correct in observing that ample opportunities had been granted to the petitioner to conclude PE. He submits that, in fact, no effective hearing took place after summons were issued by the learned ADJ on 7th March 2020, to the four witnesses whose evidence the petitioner sought to lead.

11. The first date when normal proceeding resumed thereafter, was 23rd November 2021, and, on that date, PE was closed. The records disclose that Mr. Aggarwal's submissions are correct.

12. A reply stands filed, to this petition, by Respondent 3. The reply, too, does not traverse this factual position.

13. The learned ADJ was, therefore, not justified in closing the PE on 23rd November 2021.

14. As such, the impugned order dated 23rd November 2021 is quashed and set aside.

15. The learned ADJ is directed to issue fresh summons to the aforesaid four witnesses, for a date to be fixed by her/him, so that their evidence could be recorded.

16. The petition is disposed of in the aforesaid terms, with no order as to costs.

C. HARI SHANKAR, J.

AUGUST 31, 2022/dsn