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

Date of decision: 17.10.2023

+ CM(M) 233/2022

SH. DESH DEEPAK SHARMA

..... Petitioner

Through: Mr. Randhir Jai, Mr. Dhananjai Jain and
Mr. Abhinav Bansal, Advocates

versus

SH HARSH KHOSLA (SINCE DECEASED THROUGH LRS)

..... Respondent

Through: Mr. Mayank Rustagi, Mr. Simarjit Singh
and Mr. J. Karan Malhotra, Advocates

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+ CM(M) 319/2022 & CM APPL. 17032/2022 CM APPL. 43261/2023

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..... Petitioner

Through: Mr. Randhir Jai, Mr. Dhananjai Jain and
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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. The CM(M) No. 233/2022 filed under Article 227 of Constitution of



India impugns the order dated 09.03.2022 passed by the ADJ-07, West District, Tis Hazari Courts, Delhi ('Trial Court') in Suit No. 10416/2016 ('the suit'), titled as '**Harsh Khosla v. Desh Deepak Sharma**', dismissing the application filed by the Petitioner under Section 151 of Code of Civil Procedure, 1908 ('CPC') (1st application) seeking permission to file fresh affidavit by way of evidence dated 03.03.2022 in place of earlier affidavit dated 30.01.2022 and to examine Sh. H.K. Tolani, Advocate, as a witness of defendant. The Trial Court further imposed costs of Rs. 10,000/- on the Petitioner.

1.1. The Petitioner thereafter in CM(M) No. 319/2022 impugns the subsequent order dated 29.03.2022 passed by the Trial Court, dismissing the application filed by the Petitioner under Section 151 of (2nd application) seeking issuance of summons to official witnesses to prove certain documents.

2. The Petitioner is the defendant and the Respondent is the plaintiff in the civil suit. The said suit had been initially filed under Order XXXVII of CPC for recovery of Rs. 40,82,100/- and interest thereon at the rate of 18% per annum.

2.1. The civil suit was filed on 18.07.2001 and conditional leave to defend was granted by the Trial Court to the defendant vide order dated 19.03.2005.

2.2. The Trial Court thereafter vide order dated 16.03.2018 struck off the defence of the Petitioner for violating the interim order dated 19.03.2005. The said order dated 16.03.2018 was impugned by the Petitioner in CM(M) No. 1590/2018, wherein this Court while disposing of the said petition, vide order dated 09.10.2019 granted an opportunity to the defendant to lead its evidence on terms and conditions set out in the order dated 09.10.2019. Pertinently, this



Court was of the opinion that the suit needs to be decided expeditiously and within a period of one (1) year from 09.10.2019. The said period expired in the year 2020.

2.3. The plaintiff examined five witnesses, wherein Ms. Anita Sharma was examined as PW-5. The defendant cross-examined PW-5, Ms. Anita Sharma and her evidence stood concluded on 26.02.2022.

2.4. The Trial Court thereafter set down the matter for defendant's evidence ('DE') vide order dated 26.02.2022. At this stage, the Petitioner filed the 1st application dated 03.03.2022 under Section 151 of CPC for placing on record the revised evidence by way of affidavit of the defendant, who proposed to examine himself as DW-1 and evidence affidavit of Sh. H.K. Tolani, Advocate, who was proposed to be examined as DW-2.

2.5. By this application, the Petitioner also sought leave to place on record additional documents and it was stated that filing of the said documents has become necessary in view of the cross-examination of PW-5 i.e., Smt. Anita Sharma, conducted on 26.02.2022.

2.6. The Trial Court vide impugned order dated 09.03.2022 dismissed the 1st application, imposed costs of Rs. 10,000/- on the Petitioner and listed the matter for defendant's evidence on 14.03.2022.

2.7. The Petitioner, thereafter moved the 2nd application on 24.03.2022 for summoning the two (2) official witnesses with the record of the legal proceedings pending between the defendant and his family members.

2.8. The Trial Court vide order dated 29.03.2022 concluded that the documents sought to be summoned through the official witnesses were the same documents which had already been disallowed by the Trial Court previously vide order dated 09.03.2022. The Trial Court therefore, in view of



the aforesaid fact held that 2nd application could not be maintained and dismissed the same. In addition, the Trial Court observed that though the matter is listed for DE, there was no witness present on behalf of the defendant and accordingly, the Trial Court closed the DE.

3. The learned counsel for the Petitioner states that PW-5, Ms. Anita Sharma, was an unlisted witness and the plaintiff was permitted to examine her.

3.1. He states that PW-5, Ms. Anita Sharma, is inimical to the defendant and the additional documents were sought to be placed on record by way of 1st application dated 03.03.2022 to bring on record the said fact of animosity.

4. In reply, the learned counsel for the Respondents states that the Petitioner has already filed his list of witness and the evidence by way of affidavit of the defendant i.e., DW-1 on 31.01.2022. He states that the defendant through the revised evidence by way of affidavit dated 03.03.2022 is now seeking to place on record eight (8) additional documents.

5. He states that an earlier application under Order 8 Rule 1A of CPC for placing on record additional document already stands dismissed by the Trial Court vide order dated 17.02.2022, which order has attained finality.

5.1. He states that the impugned order dated 09.03.2022 rightly records that the defendant's revised evidence by way of affidavit is beyond pleadings and more importantly not relevant to the issue arising in the present case.

5.2. He states that the documents which were put to the witness PW-5, Smt. Amita Sharma, during her cross-examination on 26.02.2022, as well were beyond the pleading and were only confronted to the witness to identify the signatures on the said documents.

5.3. He states that Petitioner after having availed the opportunity to cross-



examine the witness PW-5, cannot now object to the relevance of the witness in this petition. He states that the orders passed by this Court in CM (M) 1590/2018 for expeditious disposal have been rendered ineffective on account of actions of the defendant in not leading its evidence.

6. This Court has considered the submission of the parties and perused the record.

7. The Trial Court in its impugned order dated 09.03.2022 has given detailed reasoning for dismissing the 1st application dated 03.03.2022. The operative portion of the said order read as under:

“7. Perusal of the record shows that the similar application earlier filed by the defendant u/o 8 Rule 1A CPC was dismissed vide order dated 17/02/2022. In the said application, the defendant has sought to produce on record the documents which the defendant wants to prove in his evidence and also by producing one more witness by filing the present application. While disposing of the earlier application u/o 8 Rule 1A CPC, it was observed that the documents sought to be produced do not pertain to the plaintiff or to the defendant nor the same pertain to the subject matter in the present suit. The documents proposed to be filed by the defendant are stated to be pertained to the dispute between the family members of Smt. Neelam Sharma, wife of the defendant. It was also observed therein that the memo of parties of the plaint filed in the other suit does not even show PW-5 Smt. Amita Sharma being one of the parties in the said suit. It was also observed therein that the relevancy of the said documents with the subject matter of the present suit has not been disclosed. The defendant by way of the present application is seeking to prove those documents on the ground that the documents have been put to the witness PW-5 during her cross examination. The perusal of the record shows that at the time of putting of the documents to the PW-5 in her cross examination was objected to on behalf of the plaintiff on the ground that the same were beyond pleadings. The documents sought to be proved in evidence do not pertain to the subject matter in dispute but rather with the dispute pertaining to the other litigation which has no relevancy in the present case. The documents sought to be proved are not relevant as there is no pleading in this regard in the present case. The other witness sought to be examined is also not relevant in the present case.

8. It is well settled that in the absence of pleading, evidence, if any produced by the parties cannot be considered. It is also equally settled that no party



should be permitted to travel beyond its pleading. The documents which are sought to be produced are not relevant to the subject matter in dispute nor the same are part of the pleadings of the parties. Vide order dated 10/01/2022, the Hon'ble High Court of Delhi has further extended four months time for deciding the present suit. The delay has been caused by moving the applications by the defendant for taking the documents on record which are not part of the pleadings in the present suit. Therefore, the present application is dismissed with cost of Rs.10,000/- which has to be paid by the defendant to the plaintiff."

(Emphasis Supplied)

8. The Petitioner during the course of the arguments before this Court has not addressed any submissions on the findings recorded by the Trial Court. He has also not disputed the finding of the Trial Court that the documents sought to be produced by the Petitioner does not pertain to the subject matter of the present suit.

8.1. He does not dispute the finding of the Trial Court that there is no pleading with respect to the additional documents now sought to be placed on record.

8.2. The Petitioner admits that the earlier application filed by him under Order VIII Rule 1A of CPC was dismissed by the Trial Court on 17.02.2022, which has attained finality in view of the withdrawal of CM(M) No. 184/2022 filed against the said order.

9. In these facts and circumstances of this case, in the opinion of this Court, the impugned order dated 09.03.2022 does not suffer from any infirmity.

10. In view of the aforesaid, the CM(M) No. 233/2022 stands dismissed. Pending applications, if any, stands disposed of.

11. There is no dispute that in the 2nd application, the Petitioner made a 3rd attempt to place on record the same additional documents by summoning the



official witnesses and this application could not have been filed in view of the order dated 09.03.2022. Therefore, the Trial Court rightly dismissed the 2nd application as well, by its impugned order dated 29.03.2022.

12. With respect to impugned order dated 29.03.2022 to the extent that it dismisses the 2nd application dated 24.03.2022, this Court finds no infirmity in the said order.

However, in the opinion of this Court the Petitioner should be granted liberty to lead evidence of defendant i.e., DW-1, as per its evidence affidavit which was filed on 31.01.2022.

13. Accordingly, a last opportunity is granted to the Petitioner i.e., the defendant, to remain present before the Trial Court on the next date of hearing for examination and cross-examination of DW-1, failing which the opportunity granted by this order shall stand forfeited.

14. With the aforesaid directions CM(M) 319/2022 is allowed to this limited extent.

15. Pending applications, if any stand disposed of.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 17, 2023/hp/aa

Click here to check corrigendum, if any