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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **CM(M) 810/2022 & CM APPL. 35668/2022**  
**RAKESH KUMAR** ..... Petitioner  
Through: **Mr. Nipun Arora, Adv.**

versus

**SARASWATI DEVI** ..... Respondent  
Through: **Mr. Sumant Bhardwaj, Adv.**

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

**J U D G M E N T (O R A L)**  
**29.08.2022**

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1. This is yet another case in which the default in properly prosecuting the matter during trial is being sought to be undone by recourse to Article 227 of the Constitution of India.

2. The order dated 18<sup>th</sup> May 2022, passed in CS 9757/2016 (*Saraswati Devi v. Rakesh Kumar*) impugned in the present petition, closes the right of the petitioner, as the defendant in the suit, to cross-examine the respondent (the plaintiff in the suit), who happens to be a lady, 75 years of age, who requires physical support to come to the Court.

3. Learned Counsel for the petitioner has very fairly placed on record the entire order sheets of the Court below, as per the directions of this Court on the last date of hearing. A perusal thereof reveals that



affidavit by way of evidence was tendered by the respondent as PW-1 on 20<sup>th</sup> July 2017 and cross-examination of PW-1 was deferred on the said date. Thereafter, adjournments have been sought by the petitioner, to cross-examine respondent as PW-1 on 20<sup>th</sup> September 2017, 11<sup>th</sup> December 2017, 16<sup>th</sup> January 2018, 22<sup>nd</sup> May 2019, 6<sup>th</sup> February 2020, 19<sup>th</sup> March 2021, 22<sup>nd</sup> March 2022 and 18<sup>th</sup> May 2022, apart from 6<sup>th</sup> July 2018 and 18<sup>th</sup> September 2018 when the matter was adjourned at joint request.

4. The order sheets of the aforesaid dates of hearing read thus:

**Order dated 20<sup>th</sup> September 2017**

“CS No. 9757/16  
20.09.2017

Present: Plaintiff with Ld. Counsel YP Singh, Ld. Counsel for the Plaintiff

Defendant with Ld. Counsel Sh. Narender Singh (proxy counsel)

Defendant seeks adjournment as main counsel has went to school of child in urgent meeting called as to safety of student.

Heard. Not opposed.

In the interest of justice an adjournment is granted for purpose fixed for 11.12.17 for RPE.

SCJ/East  
20.09.17”

**Order dated 11<sup>th</sup> December 2017**

“CS No. 9757/16  
Saraswati Devi vs Rakesh Kumar



11.12.2017

Present: Plaintiff/PW-1 with counsel Ms. Vibha Walia.  
Defendant with proxy counsel Sh. Abhishek Vajpayi.

Proxy counsel for defendant seeks adjournment citing unavailability of the main counsel Sh. Pratyush Chirantan as he is stated to have gone to Vashno Devi. Same is opposed by counsel for plaintiff.

In the interest of justice, last and final opportunity is granted to the defendant to cross examine the plaintiff/PW-1. It is being clarified that no further opportunity shall be granted to the defendant to cross examine the plaintiff/PW-1.

Put up for PE/cross examination of PW-1 on 16.01.2018.

(Harleen Singh)  
SCJ/RC (East)/11.12.2017”

**Order dated 16<sup>th</sup> January 2018**

“CS No. 9757/16  
Saraswati Devi vs Rakesh Kumar  
16.01.2018

Present: Plaintiff/PW-1 with counsel Ms Vibha Walia.  
Defendant in person.

Defendant submits that he wishes to seek legal aid.

Defendant is referred to the office of DLSA, East for the needful.

Put up for PE/cross examination of plaintiff/PW-1 by way of last and final opportunity on 23.03.2018.

(Harleen Singh)  
SCJ/RC (East)/16.01.2018”



**Order dated 6<sup>th</sup> July 2018**

“CS No.9757/16

Saraswati Devi Rakesh Kumar

06.07.2018

Present: Plaintiff/PW-1 with proxy counsel Sh. Y P Singh  
Ahluwalia.

Defendant with counsel Sh. Pratyush Chirantan.

At joint request, put up for PE/cross examination of  
plaintiff/PW-1 for 18.09.2018.

(Harleen Singh)

SCJ/RC (East)/06.07.2018”

**Order dated 18<sup>th</sup> September 2018**

“Civ Suit No. 9757/16

Saraswati Devi Vs. Rakesh Kumar

18.09.2018

Present:- Sh. Dinesh Kumar, son of plaintiff.  
None for defendant.

Son of plaintiff seeks passover for appearance of the plaintiff  
and her counsel.

At request, matter is passed over for 12.30 p.m.

(Harleen Singh)

SCJ/RC (East)/18.09.2018

At 12.30 p.m.

Present:- Plaintiff/ PW-1 with counsel Ms. Vibha Walia.  
Sh. Dinesh Kumar, son of plaintiff also present.  
Defendant with proxy counsel Sh. Abhishek  
Vajpai.

Heard.



At joint request, put up for P.E./ cross-examination of the plaintiff/ PW-1 for 16.10.2018.

(Harleen Singh)  
SCJ/RC (East)/18.09.2018”

**Order dated 22<sup>nd</sup> May 2019**

“CS No.9757/16  
Saraswati Devi v. Rakesh Kumar  
22.05.2019

Present: Plaintiff/PW-1 with counsel Ms. Vibha Walia.  
Sh. Ramandeep Singh, proxy counsel for defendant.

Matter could not be settled before the Mediation Centre. Proxy counsel for defendant seeks adjournment for want of the main counsel. Same is opposed by the counsel for the plaintiff, submitting that the defendant is only trying to linger on the matter.

Accordingly, matter is adjourned for PE subject to cost of Rs.600/- to be paid by the defendant to the plaintiff.

Put up for payment of cost and PE/ cross-examination of the plaintiff/PW-1 on 13.08.2019.

(Harleen Singh)  
SCJ/RC (East)/22.05.2019”

**Order dated 6<sup>th</sup> February 2020**

“CS No 9757/16  
Saraswati Devi s Rakesh Kumar  
06.02.2020

Present: Plaintiff/PW-1 with counsel Ms. Vibha Walia.  
Defendant in person.

Defendant submits that his counsel is unable to appear today since he is unwell.



Defendant seeks some time to pay the cost. Time till next date is granted.

Put up for payment of cost and PE/cross-examination of the plaintiff PW-1 on 24.03.2020 (Last and final opportunity).

(Surabhi Sharma Vats)  
SCJ/RC (East)/06.02.2020”

**Order dated 19<sup>th</sup> March 2021**

“CNR No.DLET030018502016  
CS No.9757/16  
Saraswati Devi Vs. Rakesh Kumar

19.03.2021

Present: Plaintiff (PW-1 in person with Ld. Counsel Ms.Vibha.

Sh.Arun, Ld. Proxy counsel for defendant.

Adjournment sought by proxy counsel for defendant on the ground that main counsel is not available today.

Same has been vehemently opposed by Ld. Counsel for plaintiff submitting that the defendant is in habit of seeking repeated adjournments.

Heard.

Perusal of record transpires that a cost of Rs.600/- was imposed upon the defendant vide order dt.22.05.2019. Vide order 06.02.2020 last opportunity was granted to the defendant to cross examine PW-1, who is a senior citizen. However, today again the defendant seeks adjournment.

In the interest of justice, adjournment is granted subject to cost of Rs.1000/- to be paid to PW-1.

Be listed for payment for payment of total cost of Rs.1600/- and for cross examination of PW-1 on 04.06.2021.



(Saumya Chauhan)  
SCJ/RC (East)/19.03.2021”

**Order dated 22<sup>nd</sup> March 2022**

“Civ Suit 9757/16  
SARASWATI DEVI Vs. RAKESH KUMAR  
22.03.2022 (Through Hybrid Mode)

Present: Ms.Vibha Walia, Ld. Counsel for plaintiff PW-1.  
Mr. Kesri Gupta, Ld. Proxy counsel for the defendant.

Ld. Proxy Counsel for the defendant seeks adjournment through request letter filed on behalf of the main counsel Mr. Pratiyush Chirantan on the ground that his sister is admitted in ICU.

Heard. Granted and not opposed. However, since PW-1 is a senior citizen and various opportunities have been already granted to the defendant to cross-examine PW-1, this shall be the last and final opportunity to defendant to cross-examine PW-1 on 20.04.2022. Date given as per the convenience of the counsels.

(Saumya Chauhan)  
SCJ/RC (East)/22.03.2022”

**Order dated 18<sup>th</sup> May 2022**

“Civ Suit 9757/16 IC

SARASWATI DEVI Vs. RAKESH KUMAR  
18.05.2022 (Through Hybrid Mode)

Present: Plaintiff in person.

Defendant in person along with Ld. Counsel.

Ld. Counsel for the defendant submitted that there are chance of settlement in the pre sent case. Be awaited for the Counsel for the plaintiff.

(Manoj Kumar)  
SCJ/RC/(East)/18.05.2022

At 11:30 am.



Plaintiff in person along with. Ld. Counsel.

Defendant in person.

Present

Defendant submitted that his counsel is on the way.

Ld. Counsel for the plaintiff submitted that there is no chance of settlement in the present case. She further submitted that she has duly intimated the Ld. Counsel for the defendant in this regard.

Be awaited for the Ld. Counsel for the defendant.

(Manoj Kumar)  
SCJ/RC (East)/18.05.2022

At 12:30 pm

Present: Plaintiff in person along with Ld. Counsel.  
Defendant in person.

Defendant submitted that his counsel is not picking his phone. Ld. Counsel for the plaintiff submitted that defendant deliberately delaying the matter and avoiding to cross-examine PW1. She further submitted that PW1 is an old lady and comes to the Court with the help of an attendant. Under these circumstances, opportunity to cross-examine PW1 is closed. At request, PE stands closed.

Put up for DE on 22.08.2022.

Let, copy of evidence by way of affidavit be supplied to the Ld. Counsel for the plaintiff at least 15 days prior to the NDOH.

(Manoj Kumar)  
SCJ/RC (East)/18.05.2022”

5. More than sufficient opportunities have been granted to the petitioner to cross-examine PW-1. It is clear that there has been



woeful lack of seriousness in the manner in which the petitioner is prosecuting the proceedings.

6. The Supreme Court has in *State of U.P. v. Shambhu Nath Singh*<sup>1</sup>, held that a witness who comes to the Court for cross-examination is to be treated as a guest of the Court. It is completely impermissible to repeatedly call a witness for cross-examination merely because the Counsel who has to cross-examine the witness is, for one reason or the other, not available. This also does complete disservice to the avowed objective of ensuring speedy disposal of matters.

7. Mr. Nipun Arora, learned Counsel for the petitioner, submits that the petitioner should not be prejudiced for default of the petitioner's Counsel. He submits that, owing to the lackadaisical manner in which the Counsel was prosecuting the matter, the petitioner has replaced the Counsel.

8. That, unfortunately, cannot be a ground for this Court to exhibit leniency. It is not as if the default on the part of the petitioner is not on one or two dates; it is of as many as nine dates of hearing, before the Court chose to close the petitioner's right to cross-examine PW-1.

9. Therefore, for the petitioner cannot therefore, seek, to pass the blame onto his Counsel; always, I may note, an easy course to adopt.

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<sup>1</sup> (2001) 4 SCC 667



10. In view of the aforesaid, no case for interference with the impugned order can be said to exist within the confines of the jurisdiction vested in this Court by Article 227 of the Constitution of India.

11. The petition is accordingly dismissed in *limine*.

**C. HARI SHANKAR, J.**

**AUGUST 29, 2022**

*dsm*

