



\$~66(Appellate)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 811/2022 & CM APPL. 35669/2022**

CHARAN SINGH & ANR. Petitioners
Through: Mr. Nasir Aziz and Mohd. Azmat,
Adv.

versus

SHRI PHOOL SINGH & ANR. Respondents
Through: Mr. O.P. Aggarwal, Adv.

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

JUDGEMENT (ORAL)
12.10.2022

%

1. This petition under Article 227 of the Constitution of India assails orders dated 19th September 2019 and 22nd April 2022, passed by the learned Additional District Judge (“the learned ADJ”) in CS 8684/2016 (*Charan Singh v. Phool Singh*). The petitioners were the plaintiffs before the learned ADJ.

2. The order dated 19th September 2019 closed the evidence of PW-1 Ms. Baby Rana on the ground that she was recalcitrant in appearing for recording of her evidence. Additionally, the order records that costs of ₹ 5,000/-, which had been directed to be paid on the earlier date of hearing, are yet to be deposited.



3. The petitioners applied for a review of the aforesaid order dated 19th September 2019. The said review application has been dismissed by the subsequent order dated 22nd April 2022, which is the second order under challenge in the present proceedings.

4. The learned ADJ has observed in the order dated 22nd April 2022, that

- (i) issues were framed by the Court on 23rd July 2018, whereafter, the matter was fixed for 27th September 2018 for recording of evidence of PW-1,
- (ii) on 27th September 2018, the petitioners' witnesses were not present and an adjournment was sought, which was granted,
- (iii) on 21st December 2018, the next date of hearing, the Court did not assemble and the matter was adjourned to 21st February 2019,
- (iv) on 21st February 2019, examination-in-chief of PW-1 was conducted,
- (v) PW-1 was partly cross-examined on 25th April 2019, but her cross-examination could not be completed as she complained that she was not feeling well,
- (vi) on 4th July 2019, PW-1 was not present and an adjournment was again sought on the ground that she was unwell, which was granted as a matter of indulgence, subject to costs of ₹ 5,000/-, noting the fact that no medical documents had been placed on record to substantiate the submission of indisposition of PW-1 and



the matter was adjourned to 19th September 2019.

5. On 19th September 2019, an adjournment was yet again sought on the ground of indisposition of learned Counsel for the petitioners, which the learned Court declined and, thereby, closed PE. It was also noted, in the said order, that the costs of ₹ 5,000/- had not been deposited by the petitioners.

6. In these circumstances, the learned ADJ found no cause to review the order dated 19th September 2019 and, therefore, dismissed the review application *vide* the impugned order dated 22nd April 2022.

7. Mr. Nasir Aziz, learned Counsel for the petitioners, submits that, after 19th September 2019, Petitioner 2 had herself appeared before the learned ADJ on 7th November 2019 and tendered proof of receipt of deposit of costs of ₹ 5,000/-, which had earlier been imposed, whereupon the learned ADJ passed the following order:

“CS/8684/16

Charan Singh and Ors. v. Phool Singh

07.11.2019

....

At this stage, plaintiff no. 2/PW1 Baby Rana appears and placed on record cash deposit receipt of ₹ 5,000/-.

Record perused. On last date of hearing, evidence of plaintiff was closed by order. She has filed cash deposit receipt. Adjournment prayed and submitted that she may be permitted to lead evidence. Put up for consideration on date already fixed i.e. 09.01.2020.”



8. Mr. Aziz's submission is that, in view of the aforesaid order dated 7th November 2019, the learned ADJ ought not to have rejected the review application filed by the petitioners, and ought to have extended an opportunity to the petitioners to lead evidence and produce PW-1 for further cross-examination

9. The order dated 22nd April 2022 does not indicate that the learned ADJ was apprised of the order dated 7th November 2019. In case the application for review had been filed after 7th November 2019, there is no reason why the petitioners could not have included, in the application, a reference to the order dated 7th November 2019 if, in his view, it constituted good ground to review the order dated 19th September 2019, as a subsequent development.

10. Consequent to directions issued by this Court on 18th August 2022, the review application filed by the petitioners has been placed on record. The review application does not indicate that the petitioners had, in the said application, drawn the attention of the learned ADJ to the order dated 7th November 2019.

11. Be that as it may, it cannot be disputed that, after passing of the order dated 19th September 2019, whereby PE was closed, PW-1 appeared before the court on 7th November 2019 and placed, on record, proof of deposit of costs earlier imposed in the matter. Noting the said



fact, the court had directed listing of the petitioner's application for one more opportunity to lead PE for consideration on 9th January 2020.

12. Clearly, the earlier order dated 19th September 2019, whereby PE was closed, could not be further permitted to remain in operation as, otherwise, the order dated 7th November 2019 would be rendered futile and nugatory.

13. The dismissal, by the learned ADJ, *vide* order dated 22nd February 2022, of the petitioners' application seeking review of the order dated 19th September 2019, can also, therefore, not sustain. In view of the order dated 7th November 2019, the petitioners' requests for one more opportunity to lead the evidence of PW-1 Baby Rana was necessarily required to be considered.

14. Instead of remanding the matter to the learned ADJ for consideration of the said application, and given the time that has elapsed, Mr. O.P. Aggarwal, learned Counsel for the respondent, has very fairly agreed to grant of one more opportunity to PW-1 Baby Rana for recording of her evidence.

15. The matter is next listed before the learned ADJ on 24th November 2022.

16. PW-1 Baby Rana is directed to appear on the said date so that her



examination-in-chief and cross examination can be concluded on the said date.

17. No further opportunity would be granted to PW-1 Baby Rana in that regard.

18. The petition is, therefore, allowed in the aforesaid terms with no order as to costs.

C. HARI SHANKAR, J.

OCTOBER 12, 2022

dsn

