



\$~23(Appellate)

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

+ CM(M) 926/2022 & CM APPL.39475/2022

THE ANIMAL FRIENDS

..... Petitioner

Through: Mr. Aayush Malhotra and
Mr.Soham Kumar, Advs.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr.Mayank Bansal, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT(O R A L)

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21.09.2022

1. This petition, under Article 227 of the Constitution of India, assails order dated 25th July 2022, passed by the learned Additional District Judge (“the learned ADJ”) in CS(Comm) 77/2020 (*The Animal Friends v. DDA*), whereby the learned ADJ has closed the right of the petitioner, as the plaintiff in the suit, to lead evidence.

2. The examination-in-chief of PW-1, being the first witness of the petitioner, was conducted on 11th December 2018. The matter was directed to be listed for cross-examination of PW-1 on 6th August 2019.

3. On 6th August 2019, the petitioner informed the learned ADJ that Mr. Shiv Kapoor, whose statement had been recorded by way of examination-in-chief on 11th December 2018, was undergoing dialysis. The learned ADJ permitted the petitioner to appoint another



authorised representative of the DDA as PW-1. The matter was directed to be re-notified on 3rd December 2019.

4. On 3rd December 2019, learned Senior Counsel submits that the learned ADJ was on leave and that no order, of the said date, was uploaded on the website of the District Court.

5. After 3rd December 2019, Mr. Aayush Malhotra, learned Counsel for the petitioner submits, on instructions, that the Courts discontinued physical functioning owing to the intervention of the COVID-19 pandemic and that the first date of physical hearing thereafter was 30th May 2022.

6. On 30th May 2022, the learned ADJ took up an application of the petitioner for substituting Mr. Anil Sarin, the authorised representative of the petitioner as PW-1 in place of Sh. Shiv Kapoor. The application was allowed and a learned Local Commissioner was appointed to record the evidence of PW-1. 4th July 2022, 5th July 2022, 11th July 2022, 12th July 2022, 18th July 2022 and 19th July 2022 were fixed by the order dated 30th May 2022 as the dates when the learned Local Commissioner would record evidence.

7. On 4th July 2022, according to the petitioner, Mr. Anil Sarin who had been permitted to be substituted as PW-1 in place of Shiv Kapoor, was present. However, the petitioner submits that as he had been informed by the respondent that the respondent would be changing its counsel, Mr. Anil Sarin left the premises.



8. Apropos further dates of hearing, a prayer was made, before the learned Local Commissioner, that the next date of hearing, for recording of evidence of PW-1, be fixed after 24th July 2022, as there was a wedding in the family of PW-1, for which he had to participate in the functions which were to continue from 15th July 2022 till 24th July 2022.

9. The learned Local Commissioner, however, correctly observed that such a direction could not be passed by him as he was bound by the dates fixed by the learned ADJ.

10. Accordingly, on the next date fixed before the learned ADJ, the petitioner made a request that the further dates be fixed for recording of evidence of PW-1 (as, on 4th July 2022, the learned LC had sent the file to the court of the learned ADJ), as PW-1 had been unable to appear for recording of his evidence owing to wedding in his family.

11. The learned ADJ, however, has rejected the request observing that the date of wedding was 24th July 2022. He has also noted the fact that, though issues were framed on 15th November 2016, the plaintiff had not been in a position to lead evidence even as on that date.

12. In so observing, the learned ADJ appears to have overlooked the fact that (i) examination-in-chief of Shiv Kapoor as PW-1 was recorded on 11th December 2018, (ii) on 6th August 2019, when the matter was next posted, the learned ADJ, on being informed of the condition of health of PW-1 Shiv Kapoor, had himself noted that the petitioner could have appointed another authorised representative as



PW-1, (iii) on the next date of hearing, i.e., 3rd December 2019, the learned ADJ was on leave, (iv) thereafter, till 30th May 2022, the court functioned virtually, so that there could be no question of recording of evidence, (v) on 30th May 2022, the learned ADJ allowed the substitution of Shiv Kapoor with Anil Sarin as PW-1 and directed the learned LC to record evidence, (vi) on the first date fixed before the learned LC, i.e. 4th July 2022, PW-1 Anil Sarin was present, but his evidence could not be recorded as there was a change of counsel on behalf of respondent and (vii) the marriage ceremonies of the niece of PW-1 were to take place from 15th to 24th July 2022.

13. In these circumstances, the learned ADJ, *prima facie*, could have granted one more opportunity to the petitioner to continue with leading of petitioner's evidence.

14. Today, Mr. Mayank Bansal, learned Counsel for the DDA submits that the opportunity for the DDA to lead evidence was also closed on 18th August 2022.

15. It appears that the first opportunity for the DDA to lead evidence was in fact, fixed on 18th August 2022. On the very same day, the evidence of the DDA (DE) was closed by the learned ADJ observing that no witness was present, nor was any affidavit of any witness filed before the learned ADJ.

16. In the interests of justice, and without commenting any further on the impugned orders, and by consent of the parties, this petition is disposed of by granting one more opportunity to the petitioner to



produce the sole witness whose evidence the petitioner seeks to lead on 6th October 2022. On the said date, the petitioner would make PW-1 available for recording of examination in chief and cross examination.

17. On the said date, the DDA would also file its list of witnesses before the learned ADJ.

18. The learned ADJ would, after conclusion of the recording of evidence of PW-1, commence with the recording of evidence of the witnesses cited by the defendant whose evidence is permitted to be led by the learned ADJ.

19. The petition is accordingly disposed of with the aforesaid directions with no orders as to costs. The learned ADJ is requested to renotify the suit, presently listed before him on 23rd September 2022 for 6th October 2022. Miscellaneous application also stands disposed of.

C.HARI SHANKAR, J

SEPTEMBER 21, 2022/kr