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

+ CM(M) 1075/2022 & CM APPL.44188/2022, CM
APPL.44190/2022

SUSHMA ANAND

..... Petitioner

Through: Mr.Prag Chawla and
Ms.Jaspreet Kaur, Advs.

versus

HEMANT ANAND

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

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

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14.10.2022

1. The amended memo of parties dated 12th October 2022 is taken on record. Accordingly, this petition shall be reflected as “Shanti Anand v. Hemant Anand” instead of “Sushma Anand v. Hemant Anand”.

2. CS DJ 586/19 (*Hemant Anand v. Shanti Anand*) was instituted by the respondent against the petitioner. During the course of the proceedings, the suit was amended. Written statement was filed by the petitioner, as the defendant in the suit prior to amendment. The petitioner's application for permission to adopt the said written statement as his written statement to the amended plaint stands dismissed by the learned Additional District Judge vide the impugned order dated 28th September 2022.

3. CS DJ 586/19 was instituted by the respondent against the

CM(M) 1075/2022

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petitioner Shanti Anand. Summons were served in the said suit on 12th November 2016, consequent to which the petitioner, as the defendant in the suit, filed a written statement in response to the suit on 6th March 2017.

4. Thereafter, the respondent filed an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) seeking to re-value the relief sought in the suit. By order dated 17th August 2019, the said application was allowed and as the suit was no longer amenable to the pecuniary jurisdiction of the learned Civil Judge, the suit was transferred to the court of the learned ADJ. On 19th August 2019, the learned ADJ adjourned the suit with permission to the petitioner to file an amended written statement.

5. On 8th December 2021, the learned ADJ, noting that no amended written statement had been filed by the petitioner, closed the petitioner's right to file written statement and proceeded against the petitioner *ex parte*. Pursuant thereto, on 25th July 2022, the sole witness cited by the respondent as PW-1 was examined-in-chief. The petitioner was not allowed cross-examination of the said witness. PE was closed and the matter was listed for final hearing on 28th September 2022.

6. Assailing the said order, the petitioner moved this Court by way of CM (M) 1025/2022 (*Sushma Anand v. Hemant Anand*). Noting the concession, by learned Counsel for the respondent that the petitioner could be given one opportunity to cross examine PW-1 on

28th September 2022, when CS DJ 586/19 was next listed before the learned ADJ, this Court, *vide* order dated 23rd September 2022, disposed of CM (M) 1025/2022 with a direction to the learned ADJ to permit the petitioner to cross examine PW-1 on 28th September 2022.

7. In the interregnum, the petitioner moved an application under Section 151 of the CPC, with a prayer that the written statement filed by her prior to transfer of the suit to the Court of learned ADJ be treated as her written statement to the amended suit.

8. On 28th September 2022, the learned ADJ rejected the said request, citing the following reason for doing so:

“Considering the facts where in the present suit that the defendant has not filed any written statement to the plaint filed in the court of Ld. ADJ he cannot be allowed to adopt the written statement which was filed in the matter when the same was pending before the court of Ld. CJ by which the plaint was returned for want of pecuniary jurisdiction. The applications stand dismissed accordingly and in the facts, where no written statement of the defendant is filed, no issue arises to be framed.”

9. Additionally, a request, by the petitioner, for permission to cross examine PW-1 in the post lunch session or on another day was rejected and the witness was discharged.

10. Aggrieved by the said order, the petitioner has once again moved this Court under Article 227 of the Constitution of India by means of the present petition.

11. Two issues, therefore arise for consideration viz. (i) whether the

learned ADJ was justified in rejecting the petitioner's application under Section 151 of the CPC, for permission to treat the written statement, filed by the petitioner prior to transfer of the suit from the Court of the learned Civil Judge to the Court of the learned ADJ, as her written statement in response to the amended suit and (ii) whether the learned ADJ was justified in rejecting the petitioner's request for permission to cross examine PW-1 in the post lunch session or on another date.

12. Insofar as the first issue is concerned, a reading of the passage extracted in para 7 *supra*, which contains the reason cited by the learned ADJ for rejecting the petitioner's application under Section 151 of the CPC, reveals that the learned ADJ has proceeded on a factually incorrect premise that the plaint, which was earlier pending before the learned Civil Judge, had been returned, for re-presentation before the learned ADJ. The record reveals that the plaint was not so returned and that, consequent to amendment of the suit and enhancement of the pecuniary value of the claim in the suit, the suit was merely transferred to the Court of the learned ADJ who had jurisdiction to deal with it.

13. There could, in the circumstances, be absolutely no bar to the petitioner adopting the written statement, which was already on record in the suit, as her written statement in response to the amended suit.

14. Where a suit is amended, it is for the defendant to take a call as to whether he would choose to file a fresh written statement, in response to the amended suit, or to abide by the written statement

already filed prior to amendment. The defendant is well within his rights in deciding to adopt the written statement, already on record prior to amendment of the suit, as the written statement by way of response to the amended suit. The court cannot reject such a request. What to plead, is the pleader's prerogative.

15. In the present case, particularly, the only amendment that had been carried out in the suit was with respect to the value of the property. If, therefore, the petitioner, as the defendant in the suit, did not desire to file a fresh written statement, and was ready to contest the suit on the basis of the written statement filed prior to amendment of the suit, it was her prerogative to do so.

16. The mere fact that the right of the petitioner to file a separate written statement to the amended suit had been closed on 8th December 2021 could not act as a fetter to her adopting the written statement filed in response to the suit prior to its amendment as her written statement by way of response to the amended suit.

17. In that view of the matter, the rejection by the learned ADJ, in the impugned order, of the petitioner's application under Section 151 for permission to treat the written statement filed by her in response to the pre-amended, as her written statement by way of response to the amended suit, cannot sustain.

18. Resultantly, the written statement filed by the petitioner on 6th March 2017 prior to amendment of the suit would be entitled to be treated as her written statement in response to the amended suit, and

the application under Section 151 of the petitioner seeking the said relief, would stand allowed accordingly.

19. The second issue that arises for consideration is as to whether the learned ADJ was justified in rejecting the petitioner's request for one more opportunity to cross examine PW-1. Mr. Prag Chawla, learned Counsel for the petitioner submits that, though, *vide* order dated 29th March 2022, this court had granted only one opportunity to the petitioner to cross examine PW-1, the petitioner was unable to do so as no decision had been taken on whether the petitioner's written statement should be taken on record or not. Even so, he submits that learned Counsel for the petitioner had merely sought permission to cross examine PW-1 in the post lunch session, which could not be regarded as an unreasonable request.

20. Without going into that aspect of the matter, and in the interests of justice, I deem it appropriate to permit the petitioner to cross examine PW-1 on 27th October 2022 when the matter is next listed. The cross-examination would take place at first call and the Counsel for the petitioner should be present. The petitioner would not be granted any pass over or adjournment in that regard.

21. This petition stands allowed in the aforesaid terms with no orders as to costs. Miscellaneous applications stand disposed of.

C.HARI SHANKAR, J

OCTOBER 14, 2022/kr