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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1242/2022, CM 49423/2022 and CM 49424/2022
RAM DITTI SINCE DECEASED THROUGH LR..... Petitioner
Through: Mr. Prabhat Ranjan and Mr.
Nitin Kumar, Advs.

versus

SURENDER KUMAR SINCE
DECEASED THROUGH LR Respondent
Through:

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

ORDER(ORAL)
21.11.2022

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1. The prayer clause in this petition reads thus:

“It is therefore respectfully prayed to this Hon’ble Court may graciously be pleased to:-

a) Set aside the impugned order dated 21.09.2022 passed by Sh. Balwinder Singh, RC, Central Distt. In RC ARC No. 78979/2016 titled Surender Kumar Vs. Ram Ditti and the petitioner be given one opportunity to prove the copy of money order receipt dated 25.02.2012 by summoning DR petition no. 07/2013, Ram Ditti Vs. Surender Kumar, in the interest of justice.

b) Any other and further order, which this Hon’ble Court deems fit and proper may also be passed in the facts and circumstance of the case.”

2. The impugned order dated 21st September 2022 to the extent it is relevant, reads, on the other hand, as under:

“RW-1 is further cross-examined and discharged.

RW-2 is examined in chief, cross-examined and discharged.

At this stage, Ld. Counsel for respondent has submitted

that he wants to examine one more witness from the Record Room, Tis Hazari Court during RE. The request is strongly opposed.

In view of the order dated 11.07.2022 passed by Hon'ble High Court of Delhi, as liberty was given only for the examination of two witnesses to the respondent whose examination is already over, the request for examination of further witnesses is declined. Accordingly, RE stands closed.”

3. Apropos the interconnect between the prayer in the petition and the order impugned, Mr. Prabhat Ranjan, learned Counsel for the petitioner, submits that the prayer for calling an additional witness from the record room was for the purposes of summoning the record of DR 7/2013, which stands disposed of and is presently in the record room of the Tis Hazari Courts.

5. The learned Rent Controller (“the learned RC”) has not examined the request on merits. The impugned order has rejected the request solely on the ground that this Court, *vide* order dated 11th July 2022, granted permission only to examine two witnesses. As such, the learned RC has held that no further witness could be summoned.

6. That, however, was neither the intent nor the purpose of the order dated 11th July 2022, which was incidentally authored by me. The order dated 11th July 2022, was passed in CM (M) 642/2022 (*Surender Kumar v. Ram Ditti*), which challenged an order dated 28th September 2021 passed by the learned Senior Civil Judge in the petition in which the present order has been passed. The order dated 28th September 2021, under challenge in the said CM (M) 642/2022 allowed an application seeking recall of an earlier order dated 26th March 2021, which granted a last and final opportunity to the petitioner, as the respondent before the learned RC, to lead

respondent's evidence (RE). The said decision of the learned RC, allowed an opportunity to the petitioner to produce the two respondent's witnesses (RWs) whose evidence the petitioner has sought to lead, on 1st August 2022, and to file their affidavits in evidence positively before 22nd July 2022. Paras 9 to 14 of the said order dated 11th July 2022 read as under:

“9. In the interest of ensuring that respondent is not deprived of its right to lead evidence and to prove its case, I am of the opinion that the respondent may be granted only one opportunity to produce the respondent's witnesses.

10. Mr. Prabhat Ranjan, learned Counsel for the respondent, submits that he seeks leave to produce only two witnesses, namely, Kishan Lal and Jitender Kumar. The respondent is directed to ensure that both the aforesaid witnesses are present before the learned SCJ on 1st August 2022, when the matter is not listed before her.

11. It is made clear that if either of the respondent's witnesses is absent on the said date, the right to lead evidence of the said witnesses shall stand closed.

12. The respondent is directed to ensure that the affidavits-in- evidence of both the aforesaid witnesses are positively filed before the learned SCJ on or before 22nd July 2022, after service of advance copies thereof on the learned Counsel for the petitioner, electronically or otherwise. Failure to do so would result in forfeiture of the right to lead the evidence of the said witnesses.

13. In case one more date is needed to complete the recording of evidence of the aforesaid two witnesses, the learned SCJ is at liberty to act accordingly.

14. This petition is disposed of in the aforesaid terms *in limine*, with no orders as to costs. Miscellaneous applications also stand disposed of.”

7. This Court did not, therefore, in the order dated 11th July 2022, foreclose the right of the petitioner either to summon the records or to seek permission to examine any further witness. The impression, that the learned RC carries, to the effect that the order dated 11th July 2022

restricts the right of the petitioner to lead the evidence of only two RWs is, therefore, incorrect.

8. As that is the sole reason why the learned RC has dismissed the petitioner's application, the impugned order cannot sustain.

9. However, it appears that the petitioner did not move any formal application either to summon any additional record or to lead the evidence of any further witness. The impugned order dated 21st September 2022 indicates that an oral request was made by the petitioner, which stands declined by the learned RC.

10. As such, the impugned order is quashed and set aside. The petitioner is at liberty to move an application to lead the evidence of any further witness or to summon records, in accordance with law. The right of the respondent to oppose any such application, if and when filed by the petitioner, shall stand reserved. However, if the petitioner desires to move any such application, he is directed to do so well before the next date of hearing, when the matter is listed before the learned RC, i.e. 4th January 2023.

11. The right of the respondent to oppose any such application if moved shall also remain reserved.

12. In the event of such an application is moved by the petitioner, the learned RC is requested to pass an order thereon on the next date of hearing.

13. This petition is allowed in the aforesaid terms and to the

aforesaid extent with no order as to costs. Miscellaneous applications also stand disposed of.

C.HARI SHANKAR, J

NOVEMBER 21, 2022

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