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

% Judgment delivered on: 22.12.2022

+ CM(M) 1439/2022 and CM APP No. 55222/2022

AMIT BANSAL

..... Petitioner

versus

SUDHA GUPTA & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Kunal Kalra, Advocate

For the Respondents : Mr. Yogesh Malhotra, Advocate

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. By way of the present petition, Petitioner challenges the order dated 21.05.2007 and 03.09.2012. By virtue of order dated 21.05.2007, Joint Registrar had noted the statement of the counsel appearing on behalf of the Petitioner that he would not be cross-examining any of the witness of the Plaintiff on the premise that it was a dispute between the Respondent/Plaintiff herein and Defendant No.1 in the suit.

2. The other order, which is challenged by the Petitioner, is dated 03.09.2012 whereby the evidence of the Petitioner was treated as closed on the ground that the Petitioner had not filed the affidavits as directed

by the Court.

3. Mr. Kalra, learned counsel submits that the Petitioner had filed the application under Order XVIII Rule 17 of the Code of Civil Procedure, 1908 (CPC) praying that the evidence of the Petitioner be re-opened and the Petitioner be permitted to lead his evidence and also pray for cross-examining the witnesses of the Plaintiff as well.

4. Learned counsel submits that by virtue of the order dated 15.02.2018, learned Trial Court had, by detailed order dismissed the application under Order XVIII Rule 17 CPC. Learned counsel further submits that the said dismissal was further challenged before this Court in C.M.(M) 227/2018 and vide order dated 09.03.2018, this Court granted liberty to seek review on the statement of the counsel for the Petitioner. The dismissal of the review application, prayer of which was sought vide order dated 09.03.2018 also apparently dismissed vide order dated 18.08.2022. For ready reference, para 5 of the order dated 15.02.2018 is extracted hereunder :

“5. Perusal of the record of the case reveals that evidence of plaintiff was closed on 25/04/2011 and thereafter the matter was fixed for defendant’s evidence on 03/11/2011. Record further shows that thereafter defendants were granted various opportunities including last opportunity to file their affidavits by way of evidence but to no avail and finally on 03/09/2012 the right of defendants to lead evidence was closed. It is pertinent to mention here that defendant no.2 had later on filed an application for recalling of order dated 03/09/2012 and vide order dated 07/03/2013 defendant no.2 was permitted to lead his evidence. No such application was filed by defendant no.1 at that time. The grievance of the defendant no.1 in the said application is that his father was handling the present matter till 2000 and after the

death of his father, he did not get in touch with the counsel Sh. D.R. Bhatia, Adv, And that only on 02/09/2017 while going through the old records, it came to the knowledge of defendant no.1 about the case and he had recollected that he had engaged Sh. D.R. Bhatia as his counsel. Record shows that defendant no.1 is a party to the suit since inception of the case and he had filed written statement and it cannot be believed that he was not aware of the proceedings all these years even if it is believed that Defendant No.1 was not in touch with his counsel then only it was Defendant No.1 who is responsible for his negligence and he cannot claim the reopening of the evidence at this stage. Defendant's evidence was closed on 03.09.2012 and arguments have already been heard in the present and case is now at the stage of order. I am of the opinion that the provisions of Order 18 Rule 17 of CPC cannot be used by a party to a suit to fill up the lacuna left, to my mind, the application filed by the Defendant No.1 under Order 18 Rule 17 of the CPC is absolutely devoid of any merits and the same is hereby dismissed."

5. Learned counsel submits that this order also was challenged by way of C.M. (M) 982/2022 before this Court. It is observed that in the order dated 20.09.2022, the Petitioner sought to withdraw the petition with liberty to advance arguments before the learned Trial Court, which liberty was granted vide the said order.

6. None of the orders passed in the earlier rounds before this Court were taken to the higher Courts and have become final and binding on the petitioner.

7. Mr. Kalra, learned counsel for the Petitioner, submits that in the present petition, challenge to the impugned orders is in respect of the well settled law that the concession given by a counsel would not bind the parties and it should not interfere in the administration of justice.

Learned counsel refers to judgment of the High Court of Himachal Pradesh in *Purewal and Associates Ltd. and Ors. Vs. Punjab National Bank and Ors.*, AIR 1992 HP 26 to buttress his aforesaid argument.

8. Mr. Malhotra, learned counsel for the Respondents vehemently opposes the petition and submits that the conduct as well as orders passed earlier both by the Courts below as well as by this Court are sought to be set at naught by way of the present petition.

9. That apart, Mr. Malhotra submits that after liberty was granted by this Court in CM(M) 982/2022 vide order dated 20.09.2022, the Petitioner had already addressed final arguments before the learned Trial Court and to that extent, he is precluded from turning the clock back.

10. After having heard learned counsel for the parties, this Court is of the opinion that the argument in respect of concessions by counsel may not bind the parties may be true and correct to the extent of issue of law. Surely, the concessions, to that extent by the counsel, would not bind the party predicated on the doctrine that there is no estoppel against statute or law.

11. However, in the present case, there is no such question of law or issue of law based whereon the Petitioner was precluded from agitating his rights.

12. This Court also observes that there is an insurmountable delay in the Petitioner approaching this Court for the reliefs as sought in the present petition. The orders passed by the learned Trial Court while disposing of the application under Order XVIII Rule 17 CPC as well as the review application, are detailed and have scrutinized the conduct of the Petitioner and arrived at a finding which cannot be said to be

perverse or illegal or a procedure which is manifestly irregular seeking interference by this Court.

13. It is informed that the learned Trial Court may soon pass the final orders in the suit.

14. In view of the above, this Court is of the opinion that there is no material irregularity or illegality committed by the Joint Registrar of this Court while passing the impugned orders.

15. Petition and the application filed herewith are dismissed in limine with costs of Rs.10,000/- to be deposited with DLSA, within one week and the proof thereof be filed before this Court under a proper index.

TUSHAR RAO GEDELA, J .

DECEMBER 22, 2022

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