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

+ **CM(M) 681/2018 & CM APPL. 24070/2018**

RAGHUBIR SINGH Petitioner

Through: **Mr. Nitya Sharma, Adv.**

versus

SATWANT KAUR & ANR Respondents

Through: **Mr. A.S. Choudhary and MR.
Ramneek Singh, Adv.**

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

13.10.2022

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1. The issue in this petition, preferred under Article 227 of the Constitution of India, is elementary and no detailed reference to facts is required. Suffice it to state that, in CS 96947/2016, instituted by the petitioner against the respondent, the examination-in-chief and cross-examination of PW-1 (Raghubir Singh) was concluded on 16th November 2017.

2. On the said date, the learned Civil Judge granted a last opportunity to the petitioner to lead the evidence of the second PW (PW-2), for which purpose the matter was re-notified for 21st December 2017.

3. On 21st December 2017, the learned Presiding Officer was on leave and the matter was re-notified for 7th February 2018.

4. On 7th February 2018, the petitioner filed the affidavit in evidence of PW-2 and sought an adjournment for the examination-in-chief and cross-examination of PW-2 on the ground that the witness, as well as Counsel, was not available on that day.

5. The learned Civil Judge, however, rejected the request and closed PE and fixed the matter for Defence Evidence (DE) on 7th March 2018.

6. The present petition under Article 227 of the Constitution of India assails the aforesaid order dated 7th February 2018.

7. A reading of the order dated 7th February 2018 reveals that the learned Civil Judge has, in passing the impugned order, taken into account the number of opportunities which had been granted to the petitioner to lead and conclude PE after issues were framed on 13th July 2011.

8. Mr. Chaudhary, learned Counsel for the respondent, also emphasises the fact that, after issues were framed, several opportunities were granted to the petitioner to lead PE and the petitioner was unconscionably delaying the proceedings.

9. To my mind, any delay that may have occurred prior to 16th November 2017 is completely inconsequential to the issue in controversy in the present case.

10. On 16th November 2017, the recording of evidence of PW-1 was concluded. It is obvious that the recording of evidence of PW-2 could not be commenced till the evidence of PW-1 was concluded. The order dated 16th November 2017 also fixes the matter for recording of evidence of PW-2 on 21st December 2017.

11. On 21st December 2017 the matter could not proceed as the learned P.O. was on leave. On the next date of hearing i.e., 7th February 2018, the petitioner filed the affidavit in evidence of PW-2 and merely sought one opportunity to produce PW-2 for examination.

12. The issue in controversy was, therefore, whether in leading the evidence of PW-2, the petitioner was recalcitrant in any respect.

13. The answer to that said query has obviously necessarily to be in the negative.

14. On the very first day when the Court sat after recording of evidence of PW-2 was concluded, affidavit of evidence of PW-2 was tendered. In my considered opinion, the learned Civil Judge ought to have granted at least one opportunity for PW-2 to be presented for recording of examination-in-chief and cross-examination and not proceeded to close PE entirely on 7th February 2018.

15. In that view of the matter, the impugned order dated 7th February 2018 cannot sustain in facts or in law. It is accordingly quashed and set aside.

16. On the next date, when the matter is listed before the learned Civil Judge, the petitioner is directed to produce PW-2 for recording of examination-in-chief and cross-examination.

17. No further adjournment or further opportunity would be granted to the petitioner in that regard, and in the event that PW-2 is not presented for examination-in-chief and cross-examination on the next date of hearing, the right to lead evidence of PW-2 shall stand closed.

18. Mr. Nitya Sharma, learned Counsel for the petitioner, also submits that the petitioner had moved an application under Order XVI Rule 2 of the CPC, which is pending before the learned Civil Judge.

19. The learned Civil Judge is requested to consider and take a decision on the said application on the next date of hearing.

20. This Court does not express any opinion on the merits of the said application.

21. The petition is accordingly disposed of, with no order as to costs.

C. HARI SHANKAR, J.

OCTOBER 13, 2022

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