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

% Judgment delivered on: 17.01.2023

+ CM(M) 62/2023 & CM APPLs.1979-80/2023

ASHOK KUMAR SHARMA ..... Petitioner  
versus

SUSHIL CHANDER SHARMA & ORS ..... Respondents

**Advocates who appeared in this case:**

For the Petitioner : Mr.Sacchin Puri Sr. Adv. with Mr.Bharat Gupta, Mr.Varun Tyagi, Mr.Dhan Singh and Ms.Nidhi Rana, Advds..

For the Respondent : Mr.Subhash Sharma, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

**JUDGMENT**

**TUSHAR RAO GEDELA, J. (ORAL)**

**[ The proceeding has been conducted through Hybrid mode ]**

1. The petitioner challenges order dated 23.11.2022 in CS 10742/2016 titled “*Shakuntala Devi Vs. Ashok Kumar Sharma*” whereby the learned Trial Court has rejected the application under Order XVI Rule 1 read with Section 151 CPC, 1908 seeking summoning of court witness from the Court of Additional District Judge (Central) along with the case records of CS No. 13224 of 2016 titled *as “Shakuntala Devi vs. Bimla Devi & Anr.”* was dismissed.

2. Mr.Puri, learned Senior Counsel submits that though this Court had *vide* order dated 08.11.2021, in CRP No. 272 of 2019 permitted the present petitioner to summon the witnesses from the Army Base

Workshop in Delhi Cantt. with the condition that they be examined on one day.

3. Learned Senior Counsel submits that the summoned witness in fact did appear before the Court and gave statement, however, did not produce the documents which were sought to be proved, which are noted in the impugned order as well as order dated 08.11.2021 passed by this Court.

4. Learned Senior Counsel further submits that for abundant precaution, the petitioner who is the defendant, had also moved an application under Order XVI Rule 1 CPC seeking summoning of the Court witness for the purposes of record of CS No. 13224 of 2016, where the same documents are stated to have already been proved in accordance with law.

5. Learned counsel submits that by virtue of the present impugned order, the reliefs as sought have been declined.

6. Mr.Sharma, learned counsel appearing for respondent/plaintiff on advance notice submits that the exercise of jurisdiction by the learned Trial Court vide the impugned order is correct and there is no illegality or material irregularity while passing the impugned order. Mr.Sharma further submits that this court ought not to interfere in the impugned order.

7. Upon perusing the impugned order as also the order dated 08.11.2021 passed by the Coordinate Bench of this Court in CRP No. 272 of 2019, it is apparent that this Court had provided an opportunity to the petitioner to summon the witness along with the documents from the Army Base Workshop for a particular date.

8. No doubt that the witnesses, as submitted by Mr.Puri, learned Senior Counsel for the petitioners, appeared and gave his statement yet the non-production of the said two documents has rendered the said examination otiose.

9. The purpose with which the witnesses were summoned has not reached its logical conclusion.

10. It is also clear from the record that for abundant precaution, the documents stated to have been proved in CS No. 13224 of 2016 were also sought to be summoned.

11. After having given considerable thought upon the petition and documents, this court is of the opinion that the purpose for which an opportunity was granted has not been fulfilled and on that account, the petitioner, who is the defendant cannot be prejudiced.

12. Since the two documents which are at pages 68 and 69 of the present petition, and which were pages 317 and 318 of the record pertaining to CRP No. 272 of 2019 are already being summoned, the same would form part of the present suit which may be utilised by the petitioner to prove its case through the witnesses.

13. In view of the aforesaid, the following directions are passed:-

(i) The learned Trial Court would first summon the records pertaining to CS No. 13224 of 2016 titled as ***“Shakuntala Devi vs. Bimla Devi & Anr.”***

(ii) The learned Trial Court would also summon the witness from Army Base Workshop as summoned earlier for examination along with the direction to produce the originals, if any, of the documents at pages 68 and 69 of the present petition (317, 318) of the CRP 272 of

2019.

14. It is also directed that the learned Trial Court would summon the witness only for one particular date and unless there are any extenuating circumstances, due to which the witnesses are unable to appear, suitable time as per the convenience of the learned Trial Court may be given.

15. Both the counsels undertake to adhere to the timeline and not seek any adjournment in that regard. The learned Trial Court would not give any adjournment once the witness is present and the record pertaining to CS 13224 of 2016 is ready and available with it on that date.

16. The present petition is allowed in view of the aforesaid directions with the costs of Rs. 20,000/- to be paid to the petitioner to the respondent within a week from today.

17. The petitioner shall file appropriate application within a week from today and the learned Trial Court may endeavour to summon the witness on 17.02.2023, the date already fixed before it including the record pertaining to CS 13224 of 2016 titled *as “Shakuntala Devi vs. Bimla Devi & Ors.”*, and implement the aforesaid direction.

18. The petition stands disposed of accordingly.

**TUSHAR RAO GEDELA, J .**

**JANUARY 17, 2023***/neelam*