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

% Judgment delivered on: 13.02.2023

+ CM(M) 228/2023

KRISHAN DAYAL SHARMA Petitioner

versus

ANITA KAUSHIK Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Siddharth Aggarwal, Advocate.

For the Respondent : None

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 6843/2023 (Exemption)

1. This is an application seeking exemption from filing legible copies of the annexures.
2. Exemption is allowed, subject to all just exceptions.
3. The application stands disposed of.

CM(M) 228/2023, CM APPL.6842/2023 & CM APPL. 6844/2023

4. The petitioner challenges the order dated 14.12.2022 passed by learned Trial Court in CS DJ 8725/2016 titled '*Anita Kaushik vs Krishan Dayal Sharma & Ors*' whereby learned Trial Court had recorded the evidence of D3W1- Sh. Bal Krishan Sharma and closed DE

on behalf of respondent no.4/defendant no.3 herein and fixed the matter for recording evidence of the respondent no.1/plaintiff.

5. Learned counsel appearing for petitioner/defendant no.1 submits that this being a partition suit, petitioner/defendant no.1 had sought an opportunity to cross-examine D3W1- Sh. Bal Krishan Sharma, by way of an application under Section 151 of CPC, 1908

6. Learned counsel submits that despite having filed the aforesaid application, learned Trial Court neither afforded an opportunity to the petitioner to cross-examine D3W1 nor did it pass any orders on the said application as filed by the petitioner/defendant no.1.

7. Learned counsel submits that advance notice of the present petition was effected upon respondents no.1, 4 and 5. However, there is no appearance on behalf of either of the aforesaid respondents despite advance notice.

8. This Court proceeds to dispose of the petition in accordance with Delhi High Court Circular No. 69/Rules/DHC dated 05.12.2019.

9. Upon examination of the application and other documents placed on record by the petitioner/defendant no.1, it is clear that not only the suit pending before the learned Trial Court is one seeking partition, but also the categorical assertion has been made by petitioner/defendant no.1 that the petitioner alone is contesting the partition suit and all others are supporting the respondent no.1/plaintiff.

10. It is clear from the above that the deprivation of the chance to cross-examine D3W1 namely Sh. Bal Krishan Sharma whose evidence was recorded and closed vide the impugned order would be a material witness so far as the petitioner/defendant no.1 is concerned. Such

deprivation is contrary to the principles of fair play and justice and the petitioner ought to be afforded an opportunity to cross-examine such witness.

11. Since an application under Section 151 of CPC, 1908 seeking a similar relief is already pending before the learned Trial Court, this Court defers passing any orders in the present petition, directing the learned Trial Court to take up the application under Section 151 of CPC, 1908 filed on behalf of the petitioner/defendant no.1 on the next date of hearing, i.e. 14.02.2023 when the learned Trial Court is stated to be considering respondent no.1/plaintiff's evidence.

12. Learned Trial Court is directed to first take into consideration the application under Section 151 of CPC, 1908 before proceeding with respondent no.1/plaintiff's evidence and dispose of the application in accordance with law. It would be well for the learned Trial Court to hear the application on its own merits and decide it in accordance with law after giving due opportunity to both the sides.

13. In view of the aforesaid terms, the petition stands disposed of.

14. Pending application also stands disposed of.

15. Copy of this order be given *dasti* under signatures of Court Master.

TUSHAR RAO GEDELA, J.

FEBRUARY 13, 2023

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