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

% Judgment delivered on: 02.02.2023

+ CM(M) 1748/2019 & CM APPL. 52713/2019

SHRI CHANDAN AGGARWAL Petitioner

versus

SHRI KRISHAN LAL AND ORS. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Pramod Kumar Ahuja and Mr. Ansul Sharma, Advocates.

For the Respondents : Mr. J.C. Mahindro, Mr. Jasmeet Singh and Mr. Shubham Aggarwal, Advocates.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. Petitioner challenges the order dated 20.08.2019, whereby an application under Section 151 of the CPC, 1908, whereby the request to record the statements of Shri Dharamvir Khanduja and Shri Vijay Kumar was refused.

2. Mr. Pramod Kumar Ahuja, learned counsel for the petitioner submits that the affidavits in respect of the aforesaid witnesses were already filed on record of the Trial Court, however, at the relevant time, the witnesses had refused to get their statements recorded in favour of the petitioner. It was only subsequently when the said witnesses agreed

to give their statements in favour of the petitioner that the said application was filed before the learned Trial Court requesting such examinations.

3. Mr. Mahindro, learned counsel for the respondents vehemently opposes the said request.

4. Mr. Mahindro, learned counsel drew my attention to page No. 119, which is the part of the preliminary objections of the reply filed on behalf of the respondents to the application under Section 151 of the CPC, 1908, seeking summoning of the aforesaid two witnesses.

5. In particular, Mr. Mahindro drew the attention to para 2 of the preliminary objections which contained the extracts of the orders passed by the learned Trial Court during the pendency in respect of the aforesaid witnesses.

6. A perusal of para 2, wherein the extracts of orders dated 21.04.2016, 21.07.2016, 17.09.2016 and 24.09.2016 passed by the learned Trial Court, are extracted, makes it clear that the witnesses, namely, Shri Dharamvir Khanduja and Shri Vijay Kumar were not present on 21.04.2016 and the counsel himself had stated that the witnesses are not interested in deposing and sought time to move an application for summoning other witnesses. Subsequently, on the other dates, no such request was ever made before the learned Trial Court.

7. After a passage of long time, it appears that the petitioner sought to examine the said two witnesses and filed the application under Section 151 of the CPC, 1908.

8. The aforesaid application ended up in the impugned order being passed.

9. I have perused the order passed by the learned Trial Court in respect of the application under Section 151 of the CPC, 1908, regarding examination of the two witnesses is concerned and find that the Trial Court has given cogent reasons basis whereof, the said application was dismissed.

10. The learned Trial Court has observed that more than 10 years had passed and it was for the petitioner to have taken appropriate steps in time at the relevant stage to call for the said witnesses in support of his suit. Having failed to do that, learned Trial Court did not find any reason to interfere therewith.

11. This Court has considered the aforesaid and is in agreement with the conclusions reached by the learned Trial Court.

12. There is no merit in the present petition and the same is dismissed with no order as to costs.

TUSHAR RAO GEDELA, J .

FEBRUARY 2, 2023/nd