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

Date of decision: 12.12.2023

+ CM(M) 33/2019 & CM APPLs. 1044/2019, 36683/2022

JAGDISH CHANDRA YADAV & ANR Petitioners
Through: Mr. Vinay Kumar Tandon, Mr.
Shyam Sunder Dalal and Ms. Kanika
Rathore, Advocates

versus

KIRAN MISHRA Respondent
Through: Mr. Moni Cinmoy, Advocate

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 05.10.2018 passed by SCJ cum RC, Dwarka Courts, Delhi ('Trial Court') in CS No. 26898/2016, titled as **Kiran Mishra v. Jagdish Chandra Yadav & Anr.**, dismissing the (first) application filed by the Petitioners herein i.e., defendants to file amended written statement to the amended plaint and a second application seeking recall of the witnesses of the plaintiff i.e., Respondent herein for cross examination.

1.1. The Petitioners herein are the defendants and the Respondent herein is the plaintiff before the Trial Court.

1.2. The suit is for declaration and cancellation of sale deed executed by



the Respondent herein in favour of the Petitioners on 17.07.2012.

1.3. The Respondent herein filed an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 ('CPC') on 20.08.2016. The said application filed by the Respondent was allowed by the Trial Court vide order dated 31.05.2017.

1.4. The Petitioners herein on 03.07.2018 filed two applications; (i) first, under Section 151 of CPC to allow the Petitioners to file the amended written statement to the amended plaint filed by the Respondent; and (ii) second, an application under Order XVIII Rule 17 of CPC to allow the Petitioners for cross-examination of plaintiff witness.

1.5. The Trial Court vide the impugned order has dismissed both the application filed by the Petitioners.

2. At the outset, learned counsel for the Petitioner states on instructions that he is not pressing the relief for filing amended written statement as sought in the first application and withdraws the said prayer. The said statement is taken on record and Petitioner is bound down to the same.

3. With respect to the dismissal of the second application seeking permission to recall the witnesses of the plaintiff i.e., the Respondent and cross examine them; after some arguments and with the consent of the parties, the following directions are being passed:-

- a. The Petitioners are being granted last opportunity to cross examine plaintiff witnesses i.e., 'PW-1', 'PW-2' and 'PW-6' alone.
- b. The Petitioners concedes that they have no further right to cross examine 'PW-3', 'PW-4', 'PW-5', 'PW-7' and 'PW-8'.
- c. The Respondent has informed this Court that in fact, 'PW-3' has since



expired. And, 'PW-4' and 'PW-5' are unavailable for appearing before the Court due to their illness. Further PW-7 and PW-8 are official witnesses who had appeared to prove the documents which have been tendered in evidence by the other witnesses.

- d. The Petitioner undertakes that he will cross examine the three (3) plaintiff witnesses i.e., PW-1, PW-2 and PW-6 on the date fixed by the Trial Court and not seek any adjournment on the ground of unavailability of either the counsel or himself.
 - e. The Petitioners has submitted before this Court a list of witnesses enlisting three (3) witnesses, which includes Petitioner No. 1 and Petitioner No. 2 as well as a formal witness from the District Court. He states that the Petitioners confine themselves to lead evidence of the said three (3) witnesses alone.
 - f. The Petitioner Nos. 1 and 2 undertake to file the evidence affidavit of the two (2) party witnesses on or before 03.01.2024.
 - g. The Petitioner Nos. 1 and 2 undertakes to pay cost of Rs. 1,00,000/- to the Respondent on or before 03.01.2024 through authorised banking channels.
4. Subject to the Petitioners making payment of costs and filing their affidavit of evidence on 03.01.2024, the impugned orders dated 05.10.2018 and 31.05.2017 shall stand superseded and the Petitioner will be entitled to participate in the trial proceedings.
5. However, if the Petitioners fails to avail the opportunity granted by this order, then the opportunity shall stand forfeited and the orders dated 31.05.2017 and 05.10.2018 shall operate and bind the parties.



6. It needs mention that this last opportunity has been granted in the interest of justice and not because the Petitioner has been able to justify its non-participation and absence in the trial. The Petitioner is therefore cautioned against any further default.
7. The statements made by the Petitioners before this Court are accepted as an undertaking to this Court and this order has been passed relying upon the correctness of the statement made before this Court.
8. Petitioner is directed to file list of three witnesses before the Trial Court on or before 03.01.2024. The Petitioner will not be entitled to lead evidence of any additional witness.
9. With the aforesaid directions, the present petition stands disposed of.
10. Pending application stands disposed of.

MANMEET PRITAM SINGH ARORA, J
DECEMBER 12, 2023/rhc/sk

Click here to check corrigendum, if any