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

% Judgment delivered on: 02.02.2023

+ CM(M) 86/2019, CM APPL. 2734/2019 & CM APPL. 5272/2019

CHANDAN AGGARWAL Petitioners

versus

KUNDAN LAL GERA & ANR 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. By way of the present petition, the petitioner challenges the order dated 14.11.2018 passed by the learned Trial Court in CS No. 12085/2016 titled as “Kundan Lal Gera & Anr. vs. Chandan Aggarwal”, whereby the request of the petitioner to recall PW-1 for re-calling and for re-examination was rejected.

2. Mr. Pramod Kumar Ahuja, learned counsel for the petitioner submits that the official witness of the DDA had brought certain documents, which were stated to be correspondences exchanged between the petitioner and DDA and certain information relevant to the

issue in the suit arose therefrom requiring re-examination of PW-1.

3. Mr. Mahindro, learned counsel appearing for the respondents/ plaintiff drew the attention of this Court to the reply filed to the application under Order 16 of the CPC, 1908, which is at page 359 of the present petition, wherein the petitioner got himself impleaded to submit that the petitioner had complete knowledge of the proceedings and the correspondences which are being complained of now and as such is precluded now from raising such issues.

4. Mr. Mahindro, learned counsel for the respondents submits that having already undertaken one chance of cross-examining PW-1, it is only with view to delay the matter that the petitioner had filed the application under Order 16 of the CPC, 1908, seeking recall of PW-1. Learned counsel also submits that the learned Trial Court has correctly appreciated the arguments of the respondents/ plaintiff and rightly denied the recall of PW-1.

5. This Court has considered the submissions made across the bench, as also perused the replies filed by the respondents and after having perused the impugned order, is of the opinion that the petitioner can be given one opportunity to recall PW-1 and cross-examine the said witness to a limited extent only.

6. It is an admitted case that the petitioner got himself impleaded in the earlier suit filed by the respondents, however, the fact remains that the said documents which were brought before the learned Trial Court by the official witness from the DDA were not forming part of the earlier suit. Para Nos. 4 and 5 of the impugned order are extracted hereunder:-

“4. The main stay of the defendant to seek recall of PW 1 is on the basis of fact that the official witness from DDA has brought on certain documents in which certain correspondences were exchanged between defendant and DDA. The defendant also states that plaintiff has received an amount of Rs 10 lakhs in April 2003 and further amount of Rs 168000/- was paid by defendant to DDA in February 2004 so that extension in the construction of the plot could be sought.

5. As per the counsel there are certain correspondences in between plaintiff and DDA but no payment has been made by the plaintiff to DDA. Defendant further states that he has deposited RS. 1,68,000/- on the instruction of plaintiff. As per the defendant when the cross examination of plaintiff was being conducted he was not aware about the existence of certain correspondences in which the extension of time was sought by the plaintiff to make the payment to DDA.”

7. A careful consideration of the para Nos. 4 and 5 of the impugned order brings to fore, that the information which was elicited from the official witness of the DDA was apparently not in the knowledge of the petitioner and an opportunity to confront PW-1 in respect of those correspondences may have to be afforded to the petitioner.

8. In view of the above, this Court is of the considered opinion that PW-1 can and ought to be recalled for examination by the petitioner on restricted issues in regard to the correspondences brought across by the official witness from the DDA, and nothing other than that would be permitted to be put to PW-1.

9. Learned Trial Court would ensure that the cross-examination does not become a roving enquiry into issues other than those specified particularly in this order.

10. The aforesaid directions are subject to a payment of Rs. 20,000/- as costs by the petitioner to the respondents within one week from today.

11. It is informed that the suit is pending trial and posted on

13.02.2023. However, the learned Trial Court is requested to take up the matter on 27.02.2023 for the purpose of recalling and examining PW-1.

12. The petitioner is permitted to move an appropriate application before the learned Trial Court seeking production of the records from the DDA.

13. The learned Trial Court is directed to permit the petitioner to cross-examine PW-1 in respect of the issue crystalized above and no other questions may be permitted to be put to PW-1.

14. In view of the above, the present petition is disposed of accordingly.

TUSHAR RAO GEDELA, J .

FEBRUARY 2, 2023/nd