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

% Judgment delivered on: 21.08.2023

+ CRL.REV.P. 339/2023

SHIPRA AGARWAL

..... Petitioner

versus

STATE OF NCT OF DELHI & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. T.N. Saxena and Mr. Akshat Aggarwal, Advocates.

For the Respondents : Mr. Satinder Singh Bawa, APP for State.
Mr. Nikhil Agarwal, Mr. Rohit Kaliyar and Mr. Rahul Mehra, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CRL.M.A. 8400/2023

1. This is an application seeking condonation of delay in filing the petition.
2. For the reasons stated in the application, the delay of 30 days' in filing the petition is condoned.



3. The application stands disposed of.

CRL.REV.P. 339/2023 & CRL.M.A. 8399/2023 (Stay)

4. This is a criminal revision petition under Section 397 read with Section 401 Cr.P.C., 1973 challenging the order dated 24.11.2022 passed by Principal Judge, Family Court, District Central, Tis Hazari Courts, Delhi in case MT No. 5861619/2016 closing the right of leading evidence of the revisionist/petitioner.

5. Mr. T.N. Saxena, learned counsel appearing for the revisionist/petitioner submits that the matter was listed for recording of evidence of the petitioner on 24.11.2022. However, unfortunately on 24.11.2022, the revisionist/petitioner fell down in her house from the staircase and had received certain injuries. In support of the submissions, learned counsel has placed on record at page 269 Annexure P-22, the prescription of the Physiotherapist, according to which the revisionist/petitioner came with an ailment of severe back spasm condition, which was further diagnosed as (i) mild radiating pain in both leg (ii) (+)ve SLR (iii) partial swelling observed at right hip joint. According to the Physiotherapist, the revisionist/petitioner was advised complete rest for two weeks.

6. Learned counsel submits that on 24.11.2022, though the aforesaid medical condition of the revisionist/petitioner was brought to the notice of the learned family Court, however, learned family Court in the absence of any such document being placed on record barring a photocopy of a prescription given by Physiotherapist, found no good reasons to grant any adjournment and passed the impugned order.



7. Learned counsel for the revisionist/petitioner also submits that the learned family Court had also committed an error in noting that no evidence of the revisionist/petitioner had been filed on record. Learned counsel also draws attention of this Court to Annexure P-10, which is the order dated 14.11.2019, whereby it has been noted that evidence by way of an affidavit of the revisionist/petitioner had been filed and a copy was given to learned counsel for the respondent therein.

8. On that basis, learned counsel submits that the observations made by learned Trial Court in the impugned order that no affidavit of evidence of the petitioner having not been filed on record is an incorrect observation and an erroneous assumption.

9. Learned counsel for the revisionist/petitioner submits that the revisionist/petitioner is willing to record her evidence and be available for the purpose of cross-examination on any date, which may be fixed by this Court.

10. *Per Contra*, Mr. Nikhil Agarwal, learned counsel for the respondent vehemently opposes such prayer on the basis that despite the fact that the revisionist/petitioner had filed her evidence by way of an affidavit on 14.11.2019, she never made herself available for the respondent to conduct cross-examination.

11. Learned counsel showed number of orders whereby the revisionist/petitioner for one reason or the other had been taking adjournments.

12. Learned counsel particularly brought to this Court's notice, the order dated 25.04.2022 whereby the counsel for the revisionist/petitioner stated that the revisionist/petitioner is not available



due to fact that she was suffering from Covid-19. Despite the said submissions, learned counsel submits that no documents worth its name in respect of any test report of corona had been filed before the learned family Court till date.

13. Learned counsel further submits that no authentic prescription of the Orthopaedic surgeon has been placed on record before the learned Trial Court in terms of impugned order dated 24.11.2022 till date.

14. Learned counsel further submits that the revisionist/petitioner is a chronic litigant whose sole aim is to delay and create harassment to the respondent. Learned counsel submits that there is no reason, much less, any cogent or reasonable justification given by the revisionist/petitioner to interfere with the impugned order.

15. Learned counsel for respondent no.2 brings to the notice of this Court, the order dated 13.10.2022 whereby in para 14, the Coordinate bench of this Court had noted the undertaking given by the revisionist/petitioner to appear on each and every date given by the learned Trial Court for expeditious disposal of the main petition itself. Learned counsel submits that though the order was passed on 13.10.2022, yet the revisionist/petitioner chose not to appear on 24.11.2022.

16. This Court has heard learned counsel for the parties.

17. There are two relevant aspects to be considered by this Court:

- (i) the observation made by the learned family Court in respect of the non filing of the evidence by way of an affidavit is incorrect since as per the order dated 14.11.2019 itself, it is clear that the evidence by way of affidavit of the revisionist/petitioner



was indeed filed and a copy thereof was also supplied to learned counsel for the respondent.

(ii) So far as the issue of medical documents is concerned, as per the record placed before this Court, the revisionist/petitioner had suffered from an injury from a fall which is clear from Annexure P-22 at page 269, which is the prescription of the Physiotherapist dated 21.11.2022. According to the diagnosis and the advise rendered by the Physiotherapist, the revisionist/petitioner was directed to take rests for two weeks. Moreover, at the time of diagnosis, the Physiotherapist had already also categorically noted that there a mild radiating pain in both the legs of the revisionist/petitioner as also partial swelling observed in the right hip joint.

18. In view the Physiotherapist's prescription, it is clear that the revisionist/petitioner had indeed suffered injuries from a fall and was advised complete rest for two weeks, making it clear that the revisionist could not have obviously appeared before the learned family Court on 24.11.2022. However, the fact that the revisionist/petitioner has not been making herself available for cross-examination is also writ large in view of the orders which have been placed by the revisionist/petitioner on record, which have been perused by this Court.

19. Despite the passage of almost three years from the date of filing the evidence by way of affidavit, the revisionist/petitioner has not made herself available for cross-examination for one reason or the other and as such the said behaviour and lapse is not taken lightly by this Court.



20. This Court has also considered the undertaking noted by Coordinate bench of this Court in the order dated 13.10.2022 in Crl.Rev.P. 771/2019, and directs that the learned Trial Court shall in no case permit the revisionist/petitioner from resiling from an undertaking given to this Court from appearance on every date.

21. In view of the above, though this Court is setting aside the impugned order dated 24.11.2022 and permitting the revisionist/petitioner to lead her evidence, however the same would be subject to a cost of Rs.25,000/- to be paid by the revisionist/petitioner to respondent no.2 within one week from today.

22. It is made clear that the revisionist/petitioner shall appear before the learned family Court on 17.10.2023 and learned family Court shall make all endeavours to record her evidence and permit the respondent no.2 to conduct cross-examination in accordance with law.

23. Since the matter has been pending adjudication for the last seven years, at the request of learned counsel for the parties, the learned Family Court is requested to dispose of the petition in a time bound manner, preferably within a period of next eight months.

24. Accordingly, the petition and pending applications stand disposed of in above terms.

TUSHAR RAO GEDELA, J.

AUGUST 21, 2023

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