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

Date of decision: 12.10.2023

+ CM(M) 647/2023 & CM APPL. 19911/2023

VEENA SHARMA

..... Petitioner

Through: Mr. Atul Bandhu, Advocate

versus

TIKA RAM

..... Respondent

Through: Respondent in person

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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 05.12.2022 passed by Learned Additional District Judge in C.S. No. 1728/2016 titled as *Tika Ram vs. Veena Sharma* ('Trial Court') whereby, the Petitioner's right to lead evidence has been closed by the Trial Court.

1.1. The Petitioner is the original defendant and the Respondent is the original plaintiff. The civil suit has been filed for by the Respondent seeking a decree for partition of the property bearing no. 60, DDA Janta Flats, G.T.B. Enclave, Nand Nagri, Delhi- 110093; permanent injunction restraining the Petitioner i.e. the defendant from selling, transferring, alienating the said property and declaration with respect to relinquishment



deed dated 08.12.2014 as null and void.

2. The Petitioner is present along with her counsel and has been identified by the counsel before this Court.

3. The Respondent as well is present in person and has been identified by the Petitioner.

4. The Respondent states that he was unable to engage a counsel to represent him in these proceedings due to legal costs; therefore, he will represent himself in person and address arguments.

4.1. The Respondent states that he has no objection if the order dated 05.12.2022 is set aside. He states that however, any further any opportunity granted to the Petitioner herein should be subject to exemplary legal costs since the matter has been pending before the Trial Court since 2016 and it is the Petitioner herein, who has failed to lead her evidence despite several opportunities granted; and consequently has led to delaying the proceeding pending before the Trial Court.

5. This Court has considered the submissions of the learned counsel for the parties and perused the record.

6. In view of the proceedings recorded on 05.07.2023, 31.07.2023 and 04.09.2023, this Court is of the opinion that the order dated 06.05.2019 does not suffer from any infirmity in fact or in law since in the facts of this case, undoubtedly, the Petitioner/defendant has been negligent in conducting the proceedings before the Trial Court.

7. It is also evident from the records that there were successive opportunities given by the Trial Court to the Petitioner herein to lead evidence, yet the Petitioner has failed to avail the said opportunities.

8. However, considering the fact that the aforesaid civil suit between the



parties pertains to claim of partition of an immovable property left behind by their mother and Petitioner has relied upon a relinquishment deed alleged to have been executed by the Respondent in her favour, this Court deems it appropriate in the interest of justice to afford her a final opportunity so that the suit is decided on the merits of the defence raised by the Petitioner herein.

9. With the consent of the parties, the order dated 05.12.2022 is set aside on the following conditions:

- i. The aforesaid opportunity is being granted to the Petitioner subject to payment of legal costs of Rs. 10,000/-, which have payable to the Respondent on or before 16.10.2023 before the Trial Court for the delay caused in conclusion of evidence.
- ii. The Petitioner will remain present before the Trial Court on 16.10.2023 for tendering her evidence affidavit, which is dated 03.08.2023 and she will remain present on each successive date of hearing until her examination and cross-examination is concluded by the Respondent.
- iii. The statement of the counsel for the Petitioner made before this court and as recorded vide order dated 31.07.2023 as well to the effect that Ms. Veena Sharma is the sole witness and she only proposes herself to be examined on behalf of the defendant is taken on record and the Petitioner is bound down to the said statement.
- iv. The Petitioner has also given an undertaking to this Court that she will not seek any further unnecessary adjournment before the Trial Court and she will ensure that she remains duly represented through a counsel on each date of hearing. The Petitioner undertakes to co-operate in the expeditious disposal of the trial. It is made clear that in case she is not present before the



Trial Court, the Trial Court is requested that the matter be proceeded and heard in absence of the Petitioner i.e., defendant.

10. The counsel for the Petitioner has been directed to serve a physical copy of the evidence affidavit dated 03.08.2023 to the Respondent during the course of the day.

11. With the aforesaid directions, the present petition is disposed of and the Petitioner herein is granted last and final opportunity to lead her evidence diligently.

12. It is made clear that if the Petitioner fails to comply with the terms set out at paragraphs (i) and (ii), then the liberty granted by this order with respect to defendant's right to lead evidence shall stand revoked and the order dated 05.12.2022 shall become operational.

13. Pending application is also disposed of.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 12, 2023/msh/ms

[Click here to check corrigendum, if any](#)