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

% Judgment delivered on: 26.05.2023

+ CM(M) 729/2023

SH. OM PRAKASH

..... Petitioner

versus

SANT SINGH BAL (NOW DECEASED) THROUGH LRS

..... Respondent

+ CM(M) 731/2023

SH. JAGDISH CHANDER

..... Petitioner

versus

SANT SINGH BAL NOW DECEASED
THROUGH LRS SMT. BIRMATI DEVI & ORS

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Pranut Sharma and Mr. S.P. Yadav, Advocates

For the Respondent : Mr. Dinesh Singh Chaudhry, Advocate alongwith respondent

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)



[The proceeding has been conducted through Hybrid mode]

CM APPL. 22917/2023 & CM APPL. 23047/2023

1. Exemption allowed subject to all just exceptions.
2. The applications stand disposed of.

CM(M) 729/2023 & CM APPL. 22916/2023

CM(M) 731/2023 & CM APPL. 23047/2023

3. The petitioners challenge the order dated 27.09.2022 as also 04.03.2023 passed in CS SCJ 84031/2016 titled *Sant Singh Bal vs. Om Prakash* and in CS SCJ 84032/2016 titled *Sant Singh Bal vs. Jagdish Chander*, whereby as per the impugned order dated 27.09.2022, learned Trial Court had closed the right of the petitioners to record the defendant's evidence and in terms of order dated 04.03.2023, an application under Order XVIII Rule 17 of CPC, 1908 filed by the petitioners/defendants, was dismissed.
4. Mr. Pranut Sharma, learned counsel for the petitioners draws attention of this Court to para 5 of the impugned order dated 04.03.2023 to submit that the entire basis upon which the right of the petitioners to record his evidence was closed, was on the basis that the learned Trial Court had assumed that the cross-examination of PW-3 was not being concluded by the petitioners/defendants. Learned counsel submits that PW-3 had been cross-examined and the said recording of the evidence was concluded long back.
5. Learned counsel submits that, in fact, the case was pending at that time for the purposes of recording of the defendants' evidence. Learned counsel submits that the whole edifice of the learned Trial Court's impugned order was based on the aforesaid incorrect factual



observations.

6. Learned counsel submits that the matter was listed on 08.08.2022 when the counsel for the petitioners had sought short adjournment on the ground that he had recently been engaged. On 10.08.2021 learned counsel for the petitioners had unfortunately lost his father and on 27.09.2022, it was submitted before the learned Trial Court through the proxy counsel that certain obeisances were to be carried out in respect of late father, due to which the counsel for the petitioners was not available. Learned counsel also submits that the said information was also provided personally by counsel for the petitioners to the learned counsel for the respondent so as to inform him prior in time about his inability to appear on that particular date.

7. Learned counsel submits that without giving any due regard thereto, by the order dated 27.09.2022, the learned Trial Court closed the defendant's evidence. Consequently, the application under Order XVIII Rule 17 CPC seeking reopening of the petitioners/defendants' evidence was closed by the impugned order dated 04.03.2023.

8. *Per Contra*, Mr. Dinesh Singh Chaudhry, learned counsel appearing for the respondent vehemently opposes the said prayer on the basis that despite passage of three years, the petitioners have not been diligent enough to get the evidence of the witnesses recorded so far as the defendants are concerned. Learned counsel submits that even after the COVID period, four dates had passed and the petitioners were still found lacking in sincerity to get their evidence recorded.

9. Learned counsel submits that the impugned orders are unassailable on that count and the petition ought to be dismissed *in*



limine with costs.

10. This Court has considered the arguments of the learned counsel for the parties as also the impugned orders and other documents placed on record.

11. It is clear from the order dated 12.03.2020 passed by the learned Trial Court in suit No. CS SCJ 84032/2016 titled ***Sant Singh Bal vs. Jagdish Chander***, that the petitioner, who appeared as DW-1 was partly cross-examined and his cross-examination was deferred at the request of learned counsel for the respondent/plaintiff.

12. Since there are two cross-suits pending before the learned Trial Court, the order dated 12.03.2020 in the corresponding cross-suit reflects that it was due to the fact that petitioner/defendant was being cross-examined in the present suit, that the other suit was tagged along and adjourned for that purpose. Subsequently, the next date of hearing for the purpose of cross-examination of DW-1 was posted to 18.04.2020 as per the Trial Court record.

13. On and from 22.03.2020, the whole Country underwent a complete lockdown on account of COVID-19 pandemic, which continued right uptill February, 2022. It was only subsequent to that, that the Court functioning started coming back to normalcy. This Court can take judicial notice of the fact that even on account of intermittent return of the COVID-19 Pandemic in smaller waves, the Courts were not fully functional on the physical side.

14. That apart, learned counsel for the petitioners is correct to the extent to say that the observations in para-5 are contrary to the facts and the record itself, as obtained from perusal of the Trial Court record,



placed before this Court.

15. The fact that learned counsel for the petitioner had also informed about the learned counsel for the respondent about his inability to appear on 27.09.2021, is also not disputed.

16. It is trite that the disputes between the parties ought to be disposed of on merits rather than on petty technical issues.

17. It cannot be lost sight of the fact that the recording of evidence of DW-1 was continuing from 12.03.2020. In that view of the matter, this Court is of the considered opinion that the petitions can be allowed and consequently, the impugned orders are set aside.

18. Learned counsel submits that the list of witnesses filed on behalf of the petitioner/defendant would be about 5 to 7 witnesses and undertakes that the same would be concluded within a month.

19. However, this Court is of the considered opinion that it would be in the interests of justice as also to ensure that the respondent/plaintiff is provided with sufficient opportunity to conduct cross-examination of all the witnesses within the time stipulated for commencement and conclusion of the recording of evidence of the witnesses that the recording of evidence of defendants be completed within two months from the date the learned Trial Court recommences the cross-examination of DW-1.

20. It is also informed that the matter is listed before the learned Trial Court on 09.08.2023. The learned Trial Court is directed to commence the cross-examination of DW-1 from 09.08.2023 onwards and conclude the recording of evidence of all petitioners/defendants' witnesses within two months, thereafter.



21. Learned Trial Court shall make all endeavours to complete the same within the timelines stipulated and proceed thereafter in accordance with law.

22. The aforesaid directions and the orders passed above is subject to a payment of costs of Rs.15,000/- to the respondent by the petitioners within two weeks from today.

23. In view of the above, the petitions are disposed of.

MAY 26, 2023

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TUSHAR RAO GEDELA, J.

