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

% Judgment delivered on: 08.05.2023

+ CM(M) 732/2023 & CM APPL. 23078/2023

RAZIA & ORS. Petitioners

versus

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

Advocates who appeared in this case:

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

For the Respondent : Mr. Dinesh Singh Chaudhary, Adv.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 23079/2023 (Exemption)

1. Exemption is allowed, subject to all just exceptions.
2. Application stands disposed of.

CM(M) 732/2023 & CM APPL. 23078/2023

3. The petitioners who are the defendants before the learned Trial Court challenge the order 27.09.2022 in CS SCJ 84034/2016 titled '*Sant Singh Bal Vs. Razia & Ors.*' whereby the right to complete the cross-examination of PW3, namely, Sh. Niranjana Singh was closed on the ground that an adjournment was sought on the previous date of hearing and the costs imposed thereon were not been paid till date of the passing of the impugned order.

4. Learned counsel appearing for the petitioners/defendants submits that the learned Trial Court ought to have granted at least one more opportunity for the reason that the earlier witnesses, PW1&2, have already been cross examined and PW3 himself was partly cross examined, which itself was recorded in the order.

5. Learned counsel submits that on a previous date of hearing he was unable to appear due to the reason of unfortunate demise of his father. Learned counsel submits that the proxy counsel had given a statement that the counsel could not attend being busy in performing the last rites of his father. However, learned counsel submits that he himself had given a call to the learned counsel appearing for the respondent/plaintiff, 2-3 days prior thereto and informed that he would not be available on that particular day.

6. Learned counsel submits that the learned Trial Court did not consider all the issues and perfunctorily closed the right to complete cross examination of PW3.

7. Learned counsel appearing for the respondent/plaintiff opposes the said submission and submits that a number of adjournments had been taken time and again by the petitioners herein and as such after examining the previous conduct of the petitioner, the learned Trial Court has closed the right to complete the cross examination of PW3. Learned counsel also submits that another relevant reason for such closure was the non-payment of costs, subject where to, an adjournment was allowed.

8. This Court has considered the documents on record, impugned order as also the submissions urged by learned counsel appearing for the parties.

9. So far as the present petition is concerned, from the record, it is apparent that the recording of evidence of PW1& PW2 was completed earlier and even the cross examination of PW3 Sh. Niranjana Singh was conducted partly. Moreover, keeping in view the fact that the learned counsel had given an advance information to the learned counsel appearing for the respondent/plaintiff, the learned Trial Court could have given one more opportunity to complete the cross examination of PW3. The reason stated for seeking cross examination on 27.09.2022 by the proxy counsel appearing for the counsel for the petitioner/defendants may not be relevant, keeping in view the fact that learned counsel appearing for the respondent/plaintiff admits that the counsel had given a prior information about his inability to appear on 27.09.2022.

10. Thus, from the aforesaid it does not seem that the petitioner was delaying or protracting the trial but only due to the genuine difficulty faced by his counsel, that further cross-examination of PW3 could not be completed.

11. In view of the aforesaid facts, it would be appropriate to permit the completion of the cross examination of PW3 so as to ensure that the trial proceeds in accordance with law.

12. The impugned order to the extent that it closes the right of the petitioners / defendants to complete the cross examination of PW3 Sh. Niranjana Singh, is set aside.

13. The learned Trial Court shall permit the petitioners/ defendants to complete the cross examination on the date fixed i.e. 05.06.2023.

14. It is made clear that no further adjournment on whatsoever grounds will be granted to the petitioners / defendants. The cross

examination shall commence and complete on 05.06.2023. So far as the other witnesses of the respondents / plaintiffs are concerned, the same may be proceeded in accordance with law as per the list of witnesses filed by the respondents/plaintiffs.

15. The aforesaid order is subject to a payment of cost of Rs.15,000/- by the petitioners/defendants to the respondents / plaintiffs on or before 05.06.2023 against a valid receipt. Receipt may be filed under a proper index before the learned Trial Court.

16. In view of above, the petition is disposed of.

TUSHAR RAO GEDELA, J .

MAY 8, 2023/ms

