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

Date of decision: 30.11.2023

+ **CM(M) 742/2023 & CM APPL. 23344/2023**

VIJENDER KUMAR THROUGH HIS GPA HOLDER SUNITA

..... Petitioner

Through: Mr. S.K. Mishra and Mr. Amit
Mishra, Advocates

versus

CHAMELI DEVI AND ORS.

..... Respondents

Through: Mr. R.P. Tomar, Advocate (Through
VC)

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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 15.02.2023 passed by ADJ-02, North District, Rohini Court, Delhi ('Trial Court'), in CS DJ 57688/2016, titled as **Chameli Devi v. Vijender Kumar & Ors.**, dismissing an application filed under Order XVIII Rule 17 of the Code of Civil Procedure, 1908 ('CPC') by the Petitioner herein i.e., the defendant no.1 for recall of the order dated 30.11.2022.

1.1 The Trial Court vide order dated 30.11.2022 closed the evidence of the Petitioner herein after observing that though the matter was listed for



defendant (i.e., petitioner's) evidence on 27.02.2019, the Petitioner failed to lead evidence until 30.11.2022. No evidence affidavit of the proposed witness was also filed on record of the trial court.

1.2 The Petitioner is the defendant no. 1 and Respondent No.1 is the plaintiff in the civil suit. Respondent Nos. 2 and 3 are defendant nos. 2 and 3 respectively in the suit.

2. The learned counsel for the Petitioner states that the evidence affidavit of the proposed witness could not be filed on account of the personal reasons of the lawyer representing the defendant no.1.

2.1 He concedes that even with this petition, the evidence affidavit of the proposed witness is not enclosed.

3. This Court has perused the impugned order dated 15.02.2023 which read as under:

"I have carefully gone through the entire material available on record and heard the rival submissions of ld. counsels for the parties.

Perusal of the record of the case reveals that the issues in the present matter were framed on 19.04.2017 by the Id. predecessor of this court. PE was concluded on 14.11.2018 and thereafter, matter was fixed for DE. The defendant no. 2 and 3 closed their DE after examining D2W1 Smt. Kanta and D3W1 Smt. Neelam Devi on 27.02.2019 and thereafter, matter was fixed for evidence on behalf of defendant no. 1. A number of dates have already elapsed from 27.02.2019, whereby repeated opportunities were given to defendant no. 1 to lead evidence even subject to the costs. Vide orders dated 01.08.2022, the ld. predecessor of this court categorically directed that defendant no. 1 has to be examined first.

As on date, Ld. counsel for the defendant no. 1 states that defendant no. 1 is suffering from nerve blocking.

The abovesaid submission of the ld. counsel for the defendant no. 1 has already been dealt with by the Id. predecessor of this court on 01.08.2022.

The matter was adjourned to 06.10.2022 from 01.08.2022 and on 06.10.2022 as well, at the request of the wife of the defendant no. 1, the matter was adjourned and final opportunity was given to defendant no. 1 to lead the evidence by way of affidavit with copy thereof to the opposite



party and the matter was adjourned to 30.11.2022. On 30.11.2022, none appeared on behalf of the defendant no. 1 and **since ample and sufficient opportunities had already been given to defendant no. 1 to lead the DE, DE was closed by orders dated 30.11.2022.**

Now if the entire application of the defendant no. 1 is gone through, it becomes evidently and apparently clear that there is only one ground taken by the defendant no. 1 and the said ground is that counsel for the defendant no. 1 was out of Delhi on that date on account of missing of his sister.

I do not dispute the abovesaid submission of the ld. counsel for the defendant no. 1 but the question is as to what the defendant no. 1 was doing right from 27.02.2019 till 30.11.2022. The matter was fixed for evidence on behalf of the defendant no. 1 repeatedly and despite the directions passed by the ld. predecessor of this court on 01.08.2022 and despite the passing of two more dates, no affidavit of defendant no. 1 was filed. I have no hesitation to hold that the present application filed.”

(Emphasis supplied)

4. The learned counsel for the Petitioner does not dispute the facts recorded in the order and fairly admits that sufficient opportunities was granted to him to lead evidence.

5. The record reveals that the matter was listed for this Petitioner's evidence before the Trial Court on 27.02.2019. The Petitioner failed to file evidence affidavit of its witness for four (4) years, which has led to the Trial Court passing the impugned order on 30.11.2022 closing his right to lead evidence.

The Petitioner while filing an application for recall of order dated 30.11.2022 did not annex the evidence affidavit of the proposed witness. The Trial Court after perusing the order sheet dismissed the said application vide impugned order dated 15.02.2023.

6. The Petitioner has failed to file evidence affidavit of the proposed witness even with this petition, which further exhibits lack of diligence on the part of the Petitioner.



7. The suit is listed for final arguments before the Trial Court on 01.12.2023.

8. The Petitioner has successfully stalled the proceedings for more than four (4) years by not leading any evidence. Plaintiff, defendant nos. 2 and 3 have already led their evidence. The plaintiff has filed a suit for partition and the Petitioner herein is clearly delaying the adjudication of the said suit for his personal gains.

9. This Court is of the considered opinion that in view of the facts recorded in the impugned order there is no infirmity in the said order of the Trial Court.

10. This Court therefore, finds no warrants for interfering in this matter and the same is accordingly dismissed.

11. Pending application(s) if any disposed of.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 30, 2023/hp/sk

Click here to check corrigendum, if any