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

% Judgment delivered on: 29.05.2023

+ CM(M) 925/2023

RAJ KUMAR

..... Petitioner

versus

SMT JANAK LALI

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Dinesh Kumar Aggarwal,
Advocate.

For the Respondents : Mr. Vishal Patel, Advocate.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM(M) 921/2023 & CM APPL. 29319/2023 (for stay)

1. Petitioner challenges the order dated 14.02.2023 in CS No. 94892/2016 titled as "*Raj Kumar Singh vs. Janak Lali*", whereby the learned Trial Court had dismissed the application under Order XVI Rule 1 (3) r/w Section 151 of the Code of Civil Procedure, 1908, seeking permission to place on record an additional list of the witnesses to be



examined and also for re-opening the petitioner/ plaintiff's evidence.

2. Learned counsel for the petitioner submits that the necessity for seeking such permission arose from the fact that in the evidence, the witnesses of the respondent/ defendant have disclosed during cross-examination, that instead of the petitioner, one Mr. Sukhdev was adopted.

3. Learned counsel submits that the entire evidence in respect of the proof that the petitioner was the person who was adopted by the adoptive parents can be proved by examining the witnesses, who are named in the additional list of witnesses.

4. Learned counsel submits that though the matter is at the stage of final hearing, in order to do substantial justice, the learned Trial Court as also this Court, can permit the examination of such witnesses so as to reach the truth. Learned counsel submits that it would be in the interests of justice to provide one opportunity to the petitioner to prove the contention that the petitioner alone was the person adopted by the adoptive parents.

5. *Per contra*, learned counsel appearing for the respondent submits that the application which was dismissed, *vide* the impugned order, was moved after almost 20 years, as plaintiff's evidence had commenced in the year 2004.

6. Learned counsel also submits that the stand of the respondent/ defendant, that it was Mr. Sukhdev and not the petitioner who was adopted by the adoptive parents, was asserted in the written statement itself. Learned counsel further submits that once having disclosed the aforesaid stand of Mr. Sukhdev being adopted in place of the petitioner



was evident from the averments in the written statement, the petitioner ought to have taken steps in accordance with law and within time.

7. This Court has considered the arguments of the parties and is of the considered opinion that the present petition deserves to be dismissed.

8. On a query by this Court, the counsel for the petitioner does not dispute that the stand of the respondent/ defendant in respect of Mr. Sukhdev being adopted was already taken by the respondent/ defendant in the written statement itself. Learned counsel also submits that the appropriate objection thereto, were also taken in the replication.

9. After considering the aforesaid submission of the learned counsel for the petitioner, this Court is unable to appreciate as to why the petitioner took such a long time to seek amendment to the list of witnesses and had not examined the said witnesses in the first place itself.

10. Moreover, as per the impugned order, the petitioner had in fact examined the PW-2, who is stated to be the teacher of MCD Primary School in Sultanpuri and also PW-3 Sh. Jai Prakash, who was an attendant in the same MCD School in Sultanpuri, Delhi. Having examined the aforesaid two witnesses and that too on 08.09.2003 and 10.02.2004 respectively, the petitioner cannot be heard to request the learned Trial Court after a passage of almost 20 years to take on record the additional list of witnesses and simultaneously seek recall of the said witnesses for further examination.

11. On an overall conspectus of the order XVI Rule 1 (3) r/w Order XVIII Rule 17 of the CPC, 1908, it is amply clear that under compelling circumstances and for justified reasons, the Trial Court may in certain



cases exercise its jurisdiction to permit the parties to amend the list of witnesses or as also permit the parties to examine or recall witnesses.

12. However, in the present case, it is clear from the reading of the impugned order as also from the submissions made by the parties that the petitioner had not taken steps in time. In fact, the petitioner had literally slept over his rights over almost two decades. This observation is made on the basis that a categorical stand was made by the respondent/ defendant in the written statement so filed, which was known to the petitioner even before the year 2003 when the plaintiff's evidence commenced.

13. Having regard to the above, this Court does not deem it fit to interfere with the impugned order passed by the learned Trial Court. This Court is refraining itself from passing any order on costs, though the petition deserves to be dismissed with costs.

14. In view of the aforesaid, the present petition along with pending application stand disposed of with no order as to costs.

TUSHAR RAO GEDELA, J.

MAY 29, 2023/nd