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

Date of decision: 12.12.2023

+ CM(M) 619/2022 & CM APPLs. 29226/2022, 49284/2023, 55322/23

DELHI VOCATIONAL SCHOOL SOCIETY Petitioner

Through: Mr. Satish Sahai and Mr. Gaurav
Sharma, Advocates

versus

M/S R.K. ASSOCIATES & ANR. Respondents

Through: Ms. Bandana Kaur Grover, Advocate

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 Constitution impugns the order dated 02.06.2022 passed by the Civil Judge-06, Central District, Tis Hazari Courts, Delhi ('Trial Court') in CS SCJ No. 593591/2016, titled as '**Delhi Vocational School Society v. M/s R.K. Associates**' whereby the Trial Court, inter alia, dismissed the Petitioner's application filed under Order XVIII Rule 3 of Code of Civil Procedure, 1908 ('CPC') seeking permission to examine Sh. Inder Dev Gupta i.e., member of managing committee of plaintiff society, to prove the registered conveyance deed dated 04.06.2005 and to rebut the evidence of defendant.

2. The Petitioner is the plaintiff and the Respondent is the defendant in the civil suit. The said suit has been filed seeking declaration, permanent injunction and damages to the tune of Rs. 1 lakh.



3. Learned counsel for the Petitioner states that the issues in the suit were framed on 12.10.2001 and onus of proving issue nos. 1, 3 and 4, was placed on the Respondent i.e., the defendant.

3.1. He states that since initially, the Petitioner herein had closed his right to lead evidence in affirmative, the Petitioner herein after perusing the evidence led by the defendants was of the opinion that he should be permitted to lead the rebuttal evidence with respect to issue no. 3.

3.2. He has placed on record the evidence affidavit of Mr. Inder Dev Gupta dated 15.09.2023 and states that it is this evidence, which is proposed to be lead in rebuttal to issue no. 3, which reads as under:

“3. Whether the deft no. 1 is a bonafide purchaser for value without notice? OPD”

4. In reply, learned counsel for Respondent No. 1 states that by way of the proposed evidence affidavit of Mr. Inder Dev Gupta, the Petitioner is attempting to lead additional evidence.

4.1. She states that in this evidence affidavit, the Petitioner is seeking to tender the conveyance deed dated 04.06.2006, which though forms part of the record, was not tendered by the previous plaintiff witnesses.

4.2. She states that, in fact, PW-1 who stepped into the witness box and was cross examined on 02.01.2014 has denied his knowledge of the said conveyance deed.

4.3. She states that while the existence of the said conveyance deed is not denied since it is registered, the Respondent herein disputes the contents of the said sale deed.

4.4. She relies upon the judgement of this Court in *Shashi Sehdev v.*



Narender Kumar Sharma, 2022 SCC OnLine Del 3687, and more specifically, paragraph '12' therein.

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

6. The Trial Court while dismissing the Petitioner's application under Order XVIII Rule 3 CPC has held as under:

"I have heard the submissions and have gone through the record.

Vide this application plaintiff wishes to lead additional evidence. However, no reasonable ground has been brought forth on behalf of the plaintiffs in order to allow the present application. It was for the plaintiff to be careful in order to pursue his own matter and to lead evidence in consonance with the case that he has presented. In case of Surjit Singh & Others Vs. Jagtar Singh & Others AIR 2007 PH 1, it has been observed by the Hon'ble Court that " Order XVIII Rule 3 of CPC would not give a right to the plaintiff to lead evidence in rebuttal on issues in which the onus of proof is on the plaintiff. The rule clearly postulates that " the party beginning, may, at his option, either produce his evidence on this issues or reverse it by way of answer to the evidence, produced by the other party, The rule consciously provides the parties with an option either to produce the evidence in support of the issue or to reverse it by making a statement to that effect".

Keeping in view the above discussion and going through the record, the present application is not liable to be allowed at this stage and hence is dismissed."

7. This Court has perused the cross examination of D1W1 i.e., Ramesh Chander Gupta, and more specifically, the cross examination dated 20.05.2022. The said witness was extensively cross examined by the Petitioner herein on the issue no. 3.

7.1. This Court has also perused the contents of the proposed evidence affidavit on behalf of Mr. Inder Dev Gupta. The contents of paragraph 4 to 6 are a reiteration of the cross examination to which D1W1 was subjected.



The said proposed evidence does not qualify as rebuttal evidence.

8. With respect to contents of paragraphs 1 and 2 of the proposed evidence affidavits of Mr. Inder Dev Gupta, this Court finds merit in the contentions of the counsel for the Respondent No. 1 that these are not in the nature of rebuttal evidence and, in fact, the Petitioner herein is seeking to lead additional evidence of proving and tendering the conveyance deed dated 04.06.2006.

9. Though, the said conveyance deed was brought on record as early as on 28.08.2008 and the Petitioner also examined its witnesses till 2014, the Petitioner for reasons best known to itself, did not tender this document in evidence, despite sufficient opportunities being granted by the Trial Court.

10. This Court, therefore, on a perusal of the proposed affidavit of Mr. Inder Dev Gupta is satisfied that the contents of the said affidavit do not qualify as rebuttal evidence and therefore, there is no infirmity in the impugned order passed by the Trial Court. The Petitioner is trying to fill up the omission of its witnesses which has already been recorded.

11. The learned counsel for the Petitioner has contended that since the Petitioner herein is the plaintiff in the suit, the delay, if any, is to the prejudice of the plaintiff herein and therefore, no prejudice has been caused to the Respondent. This Court finds no merit in the submission.

12. Accordingly, in view of the aforesaid observations, this petition is dismissed. Pending applications, if any, stand disposed of.

13. It is however, clarified that since the existence of the conveyance deed dated 04.06.2006 is admitted by the Respondent, the effect of the said document shall be duly considered by the Trial Court during final



adjudication.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 12, 2023*/rhc*