



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % **Date of order : 11th July, 2023**

+ C.R.P. 172/2023 & CM APPL. 34505/2023 & CM APPL. 34506/2023

SUBHASH MENDIRATTA Petitioner
 Through: Ms. Sonali Malhotra, Advocate

versus

SURESHB MENDIRATTA Respondent
 Through: *Nemo*

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant revision petition under Section 115 of the Code of Civil Procedure, 1908 has been filed on behalf of the petitioner seeking the following reliefs:

“In view of the aforesaid facts and circumstances, it is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to set aside the impugned order dated 13.03.2023 passed by the Ld. Trial Court of Ms. Kirandeep Kaur, Ld. Civil Judge-05, Central District, Tis Hazari Courts, Delhi in CS SCJ No.596665 of 2016, titled as Suresh Mendiratta Versus Subhash Mendiratta, whereby the Ld. Trial Court was pleased to dismiss the application moved by the petitioner under the provisions of order 12 rule 6 read with section 151 of the Code of Civil Procedure and further to allow the present revision petition of the petitioner with



costs through out, thereby allowing the application moved by the petitioner under order 12 rule 6 read with section 151 of the Code of Civil Procedure and dismissing the suit filed by the respondent, in the interest of justice.

Such other or further orders as this Hon'ble Court may deems fit and proper in the facts and circumstances of the present case be also passed in favour of the petitioner and against the respondent to meet the ends of justice.”

FACTUAL MATRIX

2. A perusal of the record reveals that an injunction suit was filed against the Petitioner by the Respondent regarding the ground floor and the third-floor portion of the property bearing No. 2446, Hudson Lines, Kingsway Camp, Delhi.

3. The Respondent claimed to be the son of Smt. Geeta Devi and Shri Khem Chand and that on the demise of Smt. Geeta Devi, he had inherited the said property where the Petitioner herein were living as a licensee. Upon termination of the said license by the Respondent, he sought directions from the Ld. Trial Court for the Petitioner herein to vacate the property. Thereafter, the Petitioner filed his written submissions stating that he is the real brother of the Respondent and that the Respondent is the real son of Smt. Laxmi Devi and Shri Locha Ram and not Smt. Geeta Devi, who was the real sister of Smt. Laxmi Devi and the owner of the aforesaid property. During her lifetime Smt. Geeta Devi had executed her Will dated 8th February 2008 bequeathing the said property in favor of Smt. Laxmi Devi.

4. Smt. Laxmi Devi during her lifetime had filed a suit for recovery of possession, mesne profits and for permanent injunction against the Respondent and an application was filed by Smt. Laxmi Devi for



conducting D.N.A. test of the Respondent to conclude whether he is the son of Smt. Geeta Devi and Shri Khem Chand or he is the son of Smt. Laxmi Devi and Shri Locha Ram. Upon no objection by both the parties, they were directed to appear before the Central Forensic Science Laboratory for conducting the D.N.A. test.

5. Eight months later, the Respondent filed an application seeking quashing of the order directing the D.N.A. test to be conducted and the same was allowed and a review application filed thereto was dismissed. Smt. Laxmi Devi then filed a Civil Misc. Main Petition No.1202 of 2019 against the said order after which both the parties were directed to provide their blood samples for the D.N.A. test *vide* order dated 30th October 2019. The Respondent's application for review was also dismissed.

6. Subsequently, parties appeared before Central Forensic Science Laboratory and gave their respective blood samples. A report dated 3rd February 2020 stated that the Respondent is the son of Smt. Laxmi Devi and Shri Locha Ram and is not the son of Smt. Geeta Devi and Shri Khem Chand.

7. Thereafter, Smt. Laxmi Devi filed an application under Order XII Rule 6 read with Section 151 of the Code of Civil Procedure in the injunction suit pending before the trial court. During the pendency of the said application, she died.

8. The Petitioner (son of Laxmi Devi) herein moved an application under Order XII Rule 6 read with Section 151 of the Code of Civil Procedure on the ground that the DNA dated 3rd February 2020 resolved the question of parentage and no further proof was required. The Ld. Trial



Court *vide* its order dated 13th March 2023 dismissed the said application moved by the Petitioner by stating that the said D.N.A. report has to be duly proven and cannot be said to be admission for the purpose of deciding the suit at this stage and the said question can only be dealt with during the trial stage.

9. Being aggrieved by the impugned order, the Petitioner has approached this Court by way of filing the instant revision petition.

SUBMISSIONS

10. It is submitted that the order passed by the Ld. Trial Court failed to take material facts into consideration and the Court failed to exercise jurisdiction vested in it and therefore the order is liable to be set aside.

11. It is submitted that the learned Trial Court failed to acknowledge that the dispute regarding parentage forms the basis of the suit. It is further submitted that the Respondent has claimed to be the biological son of Smt. Geeta Devi and Shri Khem Chand only to wrongfully take away the property concerned.

12. It is also submitted that this Court had ordered the DNA test to be conducted in the suit filed by Smt. Laxmi Devi. The report of the same revealed that the Respondent is the real son of Smt. Laxmi Devi and Shri Locha Ram. The Ld. Trial Court did not consider the test report as conclusive evidence and has, therefore, wrongfully dismissed the application of the petitioner under Order XII Rule 6 read with Section 151 of the Code of Civil Procedure.

13. It is submitted that this Court had elaborated upon the evidentiary value of the DNA test in *Rohit Shekhar vs Narayan Dutt Tiwari & Anr*



AIR 2012 Del 151. The relevant extract from the judgment has been reproduced as under:

“24. Even the Constitution of India, while laying down the Fundamental Duties, by Article 51-A(h) and j) declares it to be the duty of every citizen of India to develop scientific temper and the spirit of inquiry and reform and to strive towards excellence, to reach higher levels of achievement. What we wonder is that when modern tools of adjudication are at hand, must the Courts refuse to step out of their dogmas and insist upon the long route to be followed at the cost of misery to the litigants. The answer obviously has to be no. The Courts are for doing justice, by adjudicating rival claims and unearthing the truth and not for following age-old practices and procedures when new, better methods are available.”

14. Relying upon **Dipanwita Roy vs Ronobroto Roy (2015) 1 SCC 365** it is submitted that the DNA report is sufficient evidence to conclude the question of parentage of the party concerned. For the same reason, it has been argued that there was no need to follow the procedure regarding the formal proof of the DNA report because the factum of the test report had not been denied by either of the parties. With regards to the present case, the scientific evidence being the DNA report was prepared after analysis of the blood samples by C.F.S.L. which is different from a comparison test of any writing or signature under Section 45 of the Indian Evidence Act, 1872.

15. It is submitted that the judgments delivered by the Hon’ble Supreme Court in **Uttam Singh Duggal & Co. Ltd. vs United Bank of India AIR 2000 SC 2740**, **Charanjit Lal Mehra & Ors vs Kamal Saroj Mahajan AIR 2005 SC 2765**, and **Shipping Corporation of India Ltd.**



vs Machado Brothers & Ors (2004) 11 SCC 168 held that during the pendency of the suit, if any subsequent development of significance takes place and the suit can be disposed of, then the Court has to take cognizance under Section 151 of the Code of Civil Procedure to decide the suit straight away. Therefore, the D.N.A. Report in the present suit is a subsequent development which forms the very basis of the said suit and therefore in view of the judgments cited above, the present suit is liable to be dismissed under Order 12 Rule 6 of Code of Civil Procedure.

16. Heard learned counsel for the petitioner and perused the records.

ANALYSIS

17. Before I deal with the submissions made by the Petitioner, it is important to explain the nature and scope of Order XII Rule 6 of the Code. The said provision is reproduced hereinbelow:

“[6. Judgment on admissions.—(1) Where admissions of fact have been made either in the pleading or otherwise; whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question-between the parties, make such order or give such judgment as it may think fit, having regard to such admissions. (2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.]”

18. In the above provision, the term “may” provides discretionary power to the Court to decide the applications with respect to Order XII Rule 6 of the Code. The reason for the same is that the above provision is an enabling provision and not an obligatory one.



19. The Hon'ble Supreme Court in the case of **'Himani Alloys Ltd. v. Tata Steels 2011 15 SCC 273'** dealt with the said aspect in following manner-

"11. It is true that a judgment can be given on an "admission" contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim. In short the discretion should be used only when there is a clear "admission" which can be acted upon."

20. The reasoning as provided by the Hon'ble Court in this case has been further relied upon in the catena of judgments and prevail as a settled principle of law. The Hon'ble Supreme Court in **'S.M. Asif v. Virender Kumar Bajaj (2015) 9 SCC 287'** re-emphasised the said position of law and held that:

"8. The words in Order 12 Rule 6 CPC "may" and "make such order ..." show that the power under Order 12 Rule 6 CPC is discretionary and cannot be claimed as a matter of right. Judgment on admission is not a matter of right and rather is a matter of discretion of the court. Where the defendants have raised objections which go to the root of the case, it would not be appropriate to exercise the discretion under Order 12 Rule 6 CPC. The said rule is an enabling provision which confers discretion on the court in delivering



a quick judgment on admission and to the extent of the claim admitted by one of the parties of his opponent's claim.”

Therefore, it is clear that the parties cannot claim the judgment on admission as a matter of right, rather the Courts need to look into the facts of the case and decide the said application on the basis of meeting of preconditions as required in the said provision.

21. In the instant petition, the petitioner has relied upon various judgments of the Hon'ble Supreme Court and this Court to establish the evidentiary value of the DNA report, but has failed to cite any authority categorically holding that the DNA report without the expert evidence can be acceptable in the Court.

22. In the case of '**Rajli v. Kapoor Singh 2013 SCC OnLine P&H 25166**' the Punjab and Haryana Court discussed the said issue in length and held that:

126.....I have considered the rival contentions of the parties in the light of above. In the present scenario, extensive use of biological evidence is made in crime investigations and civil proceedings. DNA evidence has assumed great significance and legal recognition. In fact, DNA Profiling Bill, 2007 is pending before the Parliament. The fact that such a bill has been introduced, itself shows the need and importance of DNA evidence. Scientific investigations are the need of the hour and must be carried out. DNA test is a scientific test and its accuracy is 99.99% and as such this must be used as evidence not only in sexual assault and violent crime cases, but also in civil cases involving question of paternity and consequent question of succession. Section 5 to 9 of the Evidence Act relate to relevancy of facts and the outcome of DNA test can certainly be treated as relevant evidence according to these provisions. It is settled principle of law that all relevant



evidence is admissible as per provision of Indian Evidence Act. Outcome of DNA test in addition be governed by provisions relating to Expert Evidence. Section 45 of the Evidence Act governs the expert opinion and court's power to form an opinion upon that report of the person specifically skilled in such science. S. 46 refers to the facts having bearing upon the expert opinion S.51 refers to grounds when opinion becomes relevant. Opinion of the expert is subject to limitations on the admissibility of scientific evidence. The court will see that expert testimony reasoning or method is scientifically valid and is relevant to the issue. Admissibility would depend on factors such as (1) whether the theory or technique can be or has been tested; (2) whether the theory or technique has been subjected to peer review and publication; (3) the known or potential rate of error; (4) the existence and maintenance of standards controlling the technique's operation; and (5) whether the theory or technique is generally accepted in the scientific community.

23. The Coordinate Bench, in the aforesaid judgment has categorically held that the outcome of the DNA report needs to be governed by the provisions related to the expert evidence. Through the same, the Court will determine whether the said expert testimony or method is scientifically valid and is relevant to the issue. Therefore, the DNA report cannot solely constitute as conclusive evidence and there is a need on part of the expert to testify the legitimacy of the said report during the trial.

24. In the instant application, the only issue left before this Court is regarding the prerequisite under Order XII Rule 6. In the case of **Delhi Jal Board v. Surender P Malik 2003 SCC OnLine Del 292**, the Court held:



“8. The provision confers almost sweeping powers on the Court to render a speedy judgment in the suit to save the parties from going through the rigmarole of a protracted trial. The only prerequisite for this is that there must be admissions of fact arising in the suit, be that in the pleadings or otherwise or orally or in writing. Such admission of facts must be clear and unequivocal, unconditional and unambiguous and may relate to the whole claim or a part of it. These need not be made specifically or expressly and could be constructive admissions also. Whether or not such admission arose in the suit would depend on the facts and circumstances of the case. If it involved disputed facts, claims and counter claims requiring evidence of parties for determination of issues or where the defense of a party touched the root of the matter, a judgment could not be passed under Order 12 Rule 6 dispensing with the trial because the valuable right of going to trial could not be taken away from the party unless the claim was admitted. A duty was, therefore, cast on the court to ascertain the admission of facts and to render judgment on these either in respect of the whole claim or a part of it. The court could do so on its own or on the application of a party and without waiting for the determination of any other question between the parties. It could do so at any stage of the suit. Dealing with the scope of provision, Supreme Court said in Uttam Singh Duggai v. Union, AIR 2000 SC 2740 :—

“Where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled. We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain a speedy judgment. Where the other party has made a plain admission entitling the former to succeed, it should apply and also



wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed.”

9. The test, therefore, is (i) whether admissions of fact arise in the suit, (ii) whether such admissions are plain, unambiguous and unequivocal, (iii) whether the defense set up is such that it requires evidence for determination of the issues and (iv) whether objections raised against rendering the judgment are such which go to the root of the matter or whether these are inconsequential making it impossible for the party to succeed even if entertained. It is immaterial at what stage the judgment is sought or whether admissions of fact are found expressly in the pleadings or not because such admissions could be gathered even constructively for the purpose of rendering a speedy judgment.”

25. On perusal of the aforesaid, it is crystal clear that the prerequisite for passing a decree under Order XII Rule 6 of the CPC is admission of fact arising in the suit which must be clear and unequivocal. Therefore, it is imperative to see whether the Respondent herein has made an admission of a fact which can be relied on for the dismissal of the suit under Order XII Rule 6. In the impugned order, the Ld. Trial Court answered the said question in the following manner:

“5. It has been held by Hon'ble Delhi High Court in the case titled as Delhi Jal Board vs. Surendra P. Malik 104 (2003) DLT 151 (DB) that the only pre requisite for passing a decree under Order 12 Rule 6 CPC is that there must be admission of fact arising in the suit, be that in the pleadings or otherwise or orally or in writing and that the admissions must be clear and unequivocal, unconditional and unambiguous. Further, admissions need not be made specifically or expressly and could be a constructive admission as well.



6. In the present application, the defendant has sought the relief on the basis of DNA report. It is stated in the application that it has been established via DNA report that the Suresh Mendiratta is son of Smt. Laxmi Devi and Sh. Locha Ram and is not son of Smt. Geeta Devi and Khem Chand. It is stated that the plaintiff claims himself to be son of Geeta Devi and Khem Chand and has inherited the property being son of Smt. Geeta Devi and Khem Chand. The said fact has been categorically established by DNA that the plaintiff is not son of Smt. Geeta Devi and Khem Chand.

7. The defendant has relied upon various judgment to show the evidentiary value of the DNA evidence. It is pertinent to mention that DNA report though is scientific evidence and has a lot of evidentiary evidence. But it has to be duly proved as per the provision of Indian Evidence Act. The said DNA report cannot be said to be admission on the part of the plaintiff. Therefore, the suit cannot be decided on the basis of the scientific evidence at this stage. The evidentiary value of the DNA report can be appreciated only after the evidence qua DNA report is lead by the parties. Moreover, there is no admission of the said fact by the plaintiff in his pleadings. Accordingly, the suit cannot be decree at this stage on the basis of DNA Report.”

26. On perusal of the above paras, it is evident that the Respondent has not made any admission and the Ld. Trial Court did not reject the application on the question of the evidentiary value of the DNA report rather dismissed the application on the procedural aspect. There is no doubt that the DNA report is considered as material evidence by the Courts. The evidentiary value of the DNA report has been upheld in a catena of judgments delivered by the Hon'ble Supreme Court, but in the instant petition, passing of a decree under Order XII Rule 6 requires



admission on part of the parties as a prerequisite and the same has not been done by the Defendants.

CONCLUSION

27. On perusal of the facts and circumstances of the instant case, this Court is of the view that the Ld. Trial Court rightly dismissed the application filed by the petitioner for dismissal of suit solely on the basis of the DNA report which is yet to be led by the parties as evidence at the stage of Trial.

28. Therefore, it becomes clear that the petition for dismissal of the pending suit cannot be allowed solely on the basis of the DNA report and an equal opportunity should be given to both the parties to admit the fact or counter the claims as made by the other party.

29. In view of the above facts and circumstances, discussion and analysis in the foregoing paragraphs, this Court while exercising its power of revision, cannot modify the impugned order passed by the Ld. Trial Court as the underlying objects of the section 115 CPC is to prevent subordinate courts from acting arbitrarily, capriciously and illegally or irregularly in exercise of their jurisdiction, which is not the case in the present revision petition.

30. Accordingly, the instant revision petition, being devoid of merits, is dismissed along with pending applications, if any.

31. The order be uploaded on the Website forthwith.

CHANDRA DHARI SINGH, J

JULY 11, 2023

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Click here to check corrigendum, if any

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