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

Date of decision: 05.09.2023

+ CM(M) 1092/2023 & CM APPL. 35549/2023

VISHWAKANT SINGH & ANR. Petitioners

Through: Mr. Shaad Anwar, Advocate

versus

SUNITA MITTAL Respondent

Through: Mr. A.P.S. Jadaun, Advocate

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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. The present petition filed under Article 227 of the Constitution impugns the order dated 07.05.2022 passed by the Civil Judge (Shahdara) Karkardooma Courts, titled as **Sunita Mittal vs. Vishwakant Singh & Anr** in civil suit bearing no. 7868/2016 ('Trial Court') whereby the Trial Court closed the evidence of the Petitioner No. 1 in view of the fact that neither the witness DW-1 i.e., Sh. Vishwakant Singh nor the counsel for Petitioner No.1 was present.

1.1. The Petitioner No. 1 is the original defendant No. 2 and the Respondent is the original plaintiff in the civil suit. The civil suit has been filed for recovery of loan amount of Rs. 1,49,000/- along with interest.

2. The Petitioner No. 1 filed an application on 21.07.2022 for seeking recall of the order dated 07.05.2022. The said application has been dismissed by the Trial Court *vide* order dated 04.01.2023 on the ground that



since the final arguments in the matter stand concluded, the said application seeking for recall of the order dated 07.05.2022 is not maintainable.

3. Learned counsel for the Respondent has entered appearance. He states that without prejudice to the rights and contentions, he has no objection if the order dated 07.05.2022 is set aside subject to strict terms and conditions being imposed on the Petitioner No. 1.

4. In response, learned counsel for the Petitioner No. 1 states that he proposes to only examine defendant no. 2 himself i.e., Sh. Vishwakant Singh as the sole witness.

4.1. He states that the Petitioner No. 1 undertakes that Sh. Vishwakant Singh shall remain duly present before the Trial Court on 28.11.2023 for his further cross examination and on each subsequent date until his cross examination is closed and discharge.

4.2. He further states that he is willing to pay reasonable cost to the Respondent herein.

4.3. He further states that Petitioner No. 1 undertakes not to seek any adjournment before the Trial Court and cooperate with the Trial Court in the expeditious disposal of the trial.

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

5.1. The Trial Court on 04.01.2023 dismissed the application of Petitioner No.1 seeking recall of the order 07.05.2022 on the ground that final arguments have been concluded.

5.2. It is, however, now come on record that the final judgement has not been pronounced by the Trial Court till date and in fact, the matter is now posted for further proceedings on 28.11.2023. In fact, in the interregnum, the



Respondent herein had filed an application under Order VII Rule 14 Code of Civil Procedure, 1908 ('CPC') for placing on record the additional documents, which was allowed *vide* order dated 24.02.2023.

5.3. Therefore, the reasons which formed the basis of the Trial Court's order dated 04.01.2023 have now ceased to exist.

6. In view of the subsequent facts and with the consent of the parties, the order dated 07.05.2022 and the consequential order dated 04.01.2023 to the extent that it dismisses the application of the Petitioner No. 1 is set aside.

7. The aforesaid opportunity is being granted to the Petitioner No. 1 subject to payment of cost of Rs. 5,000/- within two (2) weeks to the Respondent.

8. The undertaking of the Petitioner No. 1 as recorded in paragraph nos. 4, 4.1 to 4.3 above is taken on record and he is bound down to the same.

9. It is made clear that if the aforesaid conditions are not complied within the time granted by this Court, the liberty granted by this Court shall stand revoke.

10. With the aforesaid directions, the present petition is allowed in view of the aforesaid terms.

11. Pending Applications, if any, shall stands disposed of.

MANMEET PRITAM SINGH ARORA, J
SEPTEMBER 5, 2023/rhc/ms

Click here to check corrigendum, if any