



\$~25

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

Date of decision: 13.12.2023

+ CM(M) 816/2022 & CM APPL. 35871/2022

REEMA SALKAN

..... Petitioner

Through: Mr. Apoorv Sarvaria and Mr. Sahaj
Aggarwal, Advocates

versus

SUMER SINGH SALKAN & ORS.

..... Respondent

Through: Mr. Anindya Malhotra and Mr. Kartik
Wadhwa, Advocates

%

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 28.07.2022 and 01.08.2022 passed by ADJ-02, North District, Rohini Courts, Delhi ('Trial Court') in CS DJ 2040/2016 and 542/2017 (counter-claim), titled as **Reema Salkan v. Summer Singh Salkan & Ors.**, closing the right of the Petitioner to further cross examine defendant witness-1 ('DW-1').

1.1. The Petitioner herein is the plaintiff and the Respondents herein are the defendants before the Trial Court. The civil suit has been filed claiming damages of Rs. 40 lakhs.

2. The learned counsel for the Respondent states that initially the



Petitioner's right to cross-examine has been closed on 20.02.2020; and upon an application filed by her she was granted an opportunity by Trial Court on 09.06.2022 to cross examine DW-1 within a single session.

2.1 He states that, however, the said witness has been cross examined subsequently, on five (5) separate sessions running into nine (9) hours and 24 pages of cross examination have been recorded.

2.2 He states that the Petitioner's counsel deliberately failed to appear before the Trial Court on 28.07.2022 when the matter was fixed at 2:00 P.M. and therefore, the right of the Petitioner to further cross examine DW-1 was rightly closed.

2.3 He states that, nevertheless, in case this Court is inclined to grant last opportunity to the Petitioner, the same should be subject to strict terms.

3. Learned counsel for the Petitioner has relied upon the observations recorded by the predecessor Bench in its order dated 18.08.2022 while issuing notice in this petition.

3.1. He states that the Petitioner seeks a final opportunity to cross examine DW-1 and states on instructions that the cross examination will be concluded in single session. And no further session will be asked for.

4. This Court has considered the submissions of the parties and perused the record.

Impugned order dated 28.07.2022

5. This Court finds merit in the submissions of the counsel for the Respondents. The fact that DW-1 has been extensively cross examined is borne out from record. However, in view of the observations made by the predecessor Bench while admitting this petition, a final opportunity is granted to the Petitioner on the following terms:



- i. The Petitioner is bound down to the statement recorded at paragraph 3.1 hereinabove.
 - ii. The Petitioner will pay costs of Rs. 20,000/- to the Respondents on 20.12.2023 before the Trial Court.
 - iii. Subject to payment of costs, by way of a last opportunity, the Petitioner herein is granted a final opportunity to cross examine 'DW-1' over a single session, in the month of January, 2024 on a date fixed by the Trial Court. It is made clear that the cross examination will be conducted on the same date; and no further date for cross examination will be granted to the Petitioner herein.
 - iv. The Petitioner will not seek any adjournment on the date fixed by Trial Court for cross examination and in case the Petitioner is unavailable to cross examine the opportunity granted by this order shall stand revoked.
6. It is made clear that if the Petitioner fails to cross examine 'DW-1' in January, 2024 on the date fixed by the Trial Court her right to cross examine shall stand closed and the order dated 28.07.2022 shall operate between the parties.

Impugned order dated 01.08.2022

7. With respect to the second order dated 01.08.2022, the Trial Court has rejected the prayer of the Petitioner for leading evidence in rebuttal. The operative part of the order reads as under:

"Put up for final arguments.

At this stage, plaintiff submits that she wishes to lead evidence in rebuttal as she had closed her evidence in affirmative.

On asking as to on which issue she would like to lead evidence, she says that her counsel would be in a position to tell the same.

Perusal of the file shows that plaintiff has filed suit for damages quantifying it to sum of Rs.40,00,000/- whereas defendants no. 2 and 3 have filed counter claim for damages quantifying it to Rs.60,00,000/-. Suit



and counter claim have been registered separately. Issues in suit as well as in counter claim were framed separately on 17.08.2017. Thereafter, there was direction for recording of consolidated evidence in the main suit whereafter on 31.10.2017 again there was joint request that consolidated evidence may be recorded in the matters as both matters are arising out of the same subject matter. Despite there being direction on 17.08.2017 for recording of consolidated evidence again at the request of parties Court vide its order dated 30.10.2017 ordered recording of consolidated evidence in both the matters. Thereafter, plaintiff led evidence which was closed on 26.07.2019. Once order of recording of consolidation evidence was passed, the plaintiff had led the evidence as plaintiff in the main suit and as defendant in the counter claim and therefore, she had covered all the issues on which she required to lead evidence. Similarly counter claimants have examined witnesses as defence witnesses in the main suit and counter claimants witness in the counter claim. Thus, even if plaintiff has closed her evidence in affirmative, nothing remains to be reserved by her for leading evidence in the counter claim in defence of the counter claim. Hence, there is no requirement to give opportunity to the plaintiff to lead evidence in rebuttal.

Plaintiff submits that she is ok with the date for final arguments which is agreeable to the counsel for the defendants.”

(Emphasis supplied)

8. Before this Court as well, the counsel for the Petitioner was unable to identify the issue on which the rebuttal evidence is proposed to be led and the evidence proposed to be led.

9. The learned counsel for the Petitioner states that the Petitioner proposes to file certain certified copies of the judicial records in rebuttal evidence. He states that the said documents are not on record of the suit; and are intended to be collated and filed in due course. He was unable to identify or explain the nature of the said documents and their relevance. Further, the counsel was unable to state the issue for which the proposed documents are sought to be adduced. This submissions of the Petitioner shows that the intention is to lead additional evidence and not the rebuttal evidence.

10. This Court has perused the impugned order and is of the considered opinion that the Trial Court has given a reasoned order for rejecting the said



request.

11. Accordingly, the prayer in this petition for recall of the order dated 01.08.2022 is rejected.

12. With the aforesaid directions the present petition is disposed of. Pending application is disposed of.

DECEMBER 13, 2023/msh/sk

MANMEET PRITAM SINGH ARORA, J

Click here to check corrigendum, if any