



\$~72

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

Date of decision:04.09.2023

+ CM(M) 1431/2023

DIPIKA MALHOTRA

..... Petitioner

Through: Mr. Ankur Mahindro, Mr. Adhirath Singh and Mr. Rayman Singh, Advocates

versus

NEERA GROVER & ANR.

..... Respondents

Through: Mr. Rajat Aneja and Ms. Shambhavi Pandey, Advocates

%

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 45722/2023(for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM APPL. 45721/2023(stay)&CM(M) 1431/2023

1. This Petition filed under Article 227 of the Constitution of India impugns the order dated 03.08.2023 passed by the Additional District Judge, Tis Hazari Courts, New Delhi ('Trial Court') in CS. No 601/2022 titled as "**Neera Grover vs Ritesh Grover & Anr**" whereby, the Trial Court dismissed the application filed by the Petitioner under Order 18 Rule 17 Code of Civil Procedure ('CPC') for recalling of the plaintiff-witness.



1.1. For the sake of convenience, the parties are being referred to as per their original status and rank before the Trial Court.

1.2. The Petitioner herein is defendant no.2 and Respondent No.1 herein is the plaintiff in the suit. The civil suit has been filed by the plaintiff for permanent injunction against the defendants.

2. At the outset, the learned counsel for the defendant states that in this petition he is seeking a limited relief for recalling PW-1 i.e., the plaintiff herself for further cross-examination.

2.1. He states he is not pressing his relief in this petition with respect to the cross-examination of PW-2 and PW-3.

3. The learned counsel for the Respondent who appears on advance notice states that he is opposed to any grant of any further opportunity to the Petitioner.

3.1. In this regard, he relies upon the proceedings of the orders dated 08.07.2022, 08.09.2022, 16.10.2022, 17.11.2022, 24.11.2022, 02.05.2023 and 06.06.2023 to contend that the relief sought in the present petition is not bona fide.

3.2. He states that the application seeking recall of PW-1 has been filed only to delay/defer leading defendant's evidence by the Petitioner herein.

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

5. It is a matter of record that PW-1 tendered her evidence by way of an affidavit on 22.11.2021. Though, the witness i.e., PW-1, was present, adjournments were repeatedly sought by the defendant on 08.07.2022, 08.09.2022 and 06.10.2022 and no cross-examination was conducted.

6. Thereafter, on 17.11.2022, PW-1 was partially cross-examined and the



defendants right to further cross-examination PW-1 was closed on 24.11.2022. The plaintiff, thereafter, examined PW-2 and PW-3 and closed its evidence on 02.05.2023. The defendant without any demur cross-examined PW-2 and PW-3 and did not raise any concern about her right to further cross-examine PW-1 on these dates.

7. The matter was listed before the Trial Court for filing of Petitioner's evidence on 06.06.2023 and it is only at this belated stage that the defendant filed an application seeking recall of PW-1.

8. The Trial Court *vide* order dated 03.08.2023 after perusing the record and after examining the conduct of the party has returned a finding that the defendant has filed an application under Order 18 Rule 17 only to delay the proceedings. The operative portion of the impugned order read as under:

"6 The present case is also old one and as stated above, the applicant was already granted sufficient opportunities for cross examination but the same were not availed by the applicant. It appears that the intention of the applicant is to delay the proceedings of the case. Moreover, Order 18 Rule 17 CPC is not applicable as the said provision provides for recalling of any witness by the court to put such questions to him as the Court thinks fit. Therefore, the present application is dismissed."

(Emphasis supplied)

9. This Court has been informed that the matter is listed today i.e., 04.09.2023 for filing of evidence by the defendant. This Court has been informed that the Petitioner herein has elected not to file its affidavit by way of evidence till date. And, now the matter before the Trial Court has been adjourned to 04.12.2023 again for filing of defendant's evidence.

10. In these facts and circumstances, this Court is of the opinion that there is no infirmity in the order of the Trial Court and the findings therein that the Petitioner herein is delaying the proceedings. Though the impugned order was passed on 03.08.2023; this petition has only been filed and listed today



(i.e., 04.09.2023) when the matter is listed before the Trial Court. Therefore, this Court finds no infirmity in the findings of fact or in law in the impugned order passed by the Trial Court.

11. Accordingly, the present petition is dismissed. No order as to costs.

MANMEET PRITAM SINGH ARORA
(JUDGE)

SEPTEMBER 4, 2023/hp/asb

