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

Date of decision: 22.08.2023

+ **CM(M) 1352/2023 & CM APPL. 43125/2023**

RAJNI NAGPAL

..... Petitioner

Through: Mr. Pankaj Jaiswal, Advocate

versus

REETA BHAYANA

..... Respondent

Through: Mr. Naresh K. Daksh, 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):

CM APPLs. 43126/2023, 43127/2023 (For Exemption)

Allowed, subject to all just exceptions.

Accordingly, the present applications stand disposed of.

CM(M) 1352/2023 & CM APPL. 43125/2023

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 29.05.2023 passed by the Additional District Judge-02, Shahdara, Karkardooma Courts, New Delhi in the civil suit bearing no. 2432/2016, titled as *Rajni Nagpal v. Reeta Bhayana* ('Trial Court') whereby, the Petitioner's right to lead evidence has been closed by the Trial Court.

1.1. The Petitioner herein is the original plaintiff and the Respondent is the original defendant in the civil suit. The civil suit has been filed for specific performance of the agreement for sale of the property bearing no. 129-A, Third Floor, Old Anarkali, Delhi- 110051 to the plaintiff dated 02.02.2014.



2. Learned counsel for the Petitioner states that the examination and cross-examination of PW-1 has been completed.

2.1. He states that the affidavit by way of evidence of PW-2 has also been duly served on the Respondent herein.

2.2. He states that Mr. Pradeep Nagpal i.e. proposed PW-2 was not present before the Court on 29.05.2023 for his examination and cross-examination as he had been arrested by the Noida Police on 23.05.2023 and sent to judicial custody. He states that Mr. Pradeep Nagpal was granted bail only on 29.05.2023 and therefore his non-presence before the Trial Court for reasons stated above was beyond the control of the Petitioner herein.

2.3. He states that Mr. Pradeep Nagpal had remained duly present before the Trial Court on 21.03.2023 however, on the said date, he could not be examined as PW-1 was being examined on the said date.

2.4. He states that now that Mr. Pradeep Nagpal is available for recording of his evidence and the matter is next listed before the Trial Court on 25.09.2023 therefore he pleads that an opportunity be granted to examine PW-2. He states that he undertakes that the said witness will remain present before the Trial Court on each date until he is discharged.

2.5. He further states there are two (2) witnesses, which are sought to be summoned and with respect to the private witness Aarcee Sons, he has made enquiries and found out the current address of Aarcee Sons. He states that an application will be filed within one (1) week for issuance of summons to the said witnesses.

3. Learned counsel for the Respondent has entered appearance.

3.1. He states that in view of the order dated 28.11.2022 passed by this Court in CM(M) No. 1304/2022 any further opportunities granted to the



Petitioner should be subject to exemplary legal cost. He states that the Respondent herein has been forced to suffer a trial since 2014 and it is the Petitioner herein, who has failed to complete leading of his evidence.

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

5. There is no dispute that PW-2 was in judicial custody as on 29.05.2023 and therefore, his non-appearance before the Trial Court on the said date has been reasonably explained. Further the fact that PW-2 remained present before the Trial Court on 21.03.2023 is also matter of record.

6. This Court is therefore of the opinion that further opportunity should be granted to the Petitioner to complete the evidence of PW-2 considering his affidavit by way of evidence has already been filed.

7. The impugned order dated 29.05.2023 is set aside on following conditions: -

a. Mr. Pradeep Nagpal i.e. PW-2 will remain present before the Trial Court on 25.09.2023 and on all subsequent dates fixed by the Trial Court until his examination and cross-examination is concluded.

b. The Petitioner herein will file an application within a period of one (1) week for summoning of two (2) witnesses enlisted in his application dated 23.03.2023 alongwith the fresh address of the summon witness No. 2.

c. The aforesaid opportunity is being granted to the Petitioner subject to payment of legal costs of Rs. 20,000/- payable to the Respondent within a period of one (1) week. In case, there is any default in payment, then the right to lead evidence shall stand closed.

8. It is clarified that the defendant will be entitled to lead evidence after the conclusion of the plaintiff evidence.



9. With the aforesaid directions, the present petition is disposed of.
10. Pending applications, if any, stands disposed of.

MANMEET PRITAM SINGH ARORA, J
AUGUST 22, 2023/rhc/ms

[Click here to check corrigendum, if any](#)

