



2024:DHC:7006



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

% **Date of order: 6th September, 2024**

+ **C.R.P. 63/2024 & CM APPL. 8989/2024**

NIDHI GOYALPetitioner

Through: **Mr.Yash Aggarwal, Advocate**

versus

GUDDU CHAUDHARY & ORS.Respondents

Through: **Mr.Varun Divakar and Mr.Shivam
Tomar, Advocates for R-1
Ms.Chitrakshi, Advocate for R-3**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant civil revision petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter as the 'CPC') has been filed on behalf of the petitioner seeking the following reliefs:

"A. Set aside the impugned order dated 20.12.2023 passed by the Mr. Kishore Kumar, Ld. Additional District Judge-04, north, RHC/ Delhi in case no. CS DJ 250/18 titled Nidhi Goyal vs Guddu Chaudhary

B. Pass an order thereby directing the Ld. Trial court to reopen the plaintiff evidence

C. To Allow the petitioner to examine the witnesses as mentioned in the petiton

D. Pass such other or further order/s as this Hon'ble Court may deem fit and proper in facts and circumstances of the case"

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2. The brief facts of the case are that the petitioner herein purchased a property bearing no. 2-E, Prithviraj Road, D Block, Adarsh Nagar, Delhi (hereinafter as the 'suit property') *vide* sale deed dated 23rd June, 2016, which is duly registered in Book No. I, Volume No. 6361, Pages 31-38, Registration No. 8108 with Sub-Registrar VI-A, Delhi. The suit property comprises of build-up structure on land measuring 170 square yards, identified as part of Khasra No. 262/258/217/4, situated in the area of Village Bharola, within the locality known as Prithvi Raj Road, D-Block, Adarsh Nagar, Delhi.
3. The petitioner/ plaintiff has filed a civil suit bearing no. CS DJ 250/18 for declaration of possession, mesne profits and permanent injunction of the suit property before the learned ADJ, North District, Rohini Courts, Delhi (hereinafter as the 'Trial Court') against the respondents/ defendant no. 1 and 2, who are allegedly being in illegal occupation of the suit property and respondent/ defendant no.3, who is the predecessor-in-interest herein.
4. On 18th May, 2023, the learned Trial Court ordered the petitioner to engage a counsel on immediate basis for competition of plaintiff's evidence as her counsel remained absent. Accordingly, the petitioner engaged a counsel and completed her evidence, however, only until later did she came to know that the entire plaintiff's evidence has been closed by the learned Trial Court *vide* order dated 18th May, 2023.
5. In light of the same, the petitioner filed an application under Order XVIII Rule 17 of the CPC with a list of witnesses seeking re-opening of plaintiff's evidence, which was dismissed *vide* order dated 20th December,



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2023 (hereinafter as the 'impugned order') for not meeting the statutory requirement under the CPC.

6. Aggrieved by the same, the petitioner has filed the instant petition.

7. Learned counsel appearing on behalf of the petitioner submitted that after framing of the issues on 5th August, 2019, the previous counsel failed to file a list of witnesses before the learned Trial Court and that the petitioner being a layman, did not comprehend the adversity of such inaction.

8. It is submitted that the petitioner was under the impression that only her individual evidence is being closed, however, the petitioner's evidence in entirety has been closed by the learned Trial Court on 18th May, 2023.

9. It is further submitted that the examination of witnesses is vital for proper adjudication of the issue and that if the petitioner is not permitted to examine the witnesses as per the list, it will cause grave injustice to her.

10. In view of the foregoing submissions, it is prayed that in the interest of justice, the petitioner may be allowed to examine the witnesses as per the list submitted and furthermore, the learned Trial Court may be directed to re-open the plaintiff evidence.

11. *Per contra*, learned counsel appearing on behalf of the respondents vehemently opposed the instant petition submitting to the effect that there is no illegality or error in the impugned order passed by the learned Trial Court as the statutory provisions were duly considered while passing the impugned order.

12. It is submitted that the petitioner has also admitted that after the framing of the issues, the list of witnesses was not filed and the appropriate



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provision requires for filing of such list within 15 days from the date of framing of the issues.

13. It is further submitted that the application under Order XVIII Rule 17 of the CPC was filed at the belated stage, which is more than four years, and due to its limited scope of jurisdiction under Section 115 of the CPC, this Court has no power to condone such delay in submitting the list of witnesses as well as to interfere in the impugned order. Hence, it is a settled law that in such cases, the Court cannot interfere in the impugned order passed by any Court of law under Section 115 of the CPC.

14. It is further submitted that the petitioner has chosen not to file the list of witnesses at the appropriate stage and has only filed a list of additional documents, hence, there is no force in the argument advanced by the learned counsel for the petitioner pertaining to the engagement of new counsel as per the directions of the learned Trial Court. Moreover, the plaintiff evidence was closed based on the separate statement given by her in presence of her counsel on 18th May, 2023.

15. Therefore, in view of the foregoing submissions, it is prayed that the instant petition, being devoid of any merit, is liable to be dismissed.

16. Heard learned counsel for the parties and perused the record.

17. It is the case of the petitioner that due to the negligence of her previous counsel, the list of witnesses was not filed at the appropriate stage and that she may be permitted to examine the witnesses by re-opening the plaintiff's evidence before the learned Trial Court. Hence, it is prayed that the instant petition be allowed.



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18. In rebuttal, it is the contention of the respondents that the impugned order was passed by following the appropriate statutory procedure laid down under the CPC and therefore, no case is made out for interference of this Court.

19. Therefore, the limited question for adjudication before this Court is whether the learned Trial Court erred in passing the impugned order by rejecting the petitioner's application under Order XVIII Rule 17 of the CPC.

20. Before going into the merits of the case, it is imperative for this Court to delve into the scope of Section 115, under which the petitioner has challenged the impugned order.

21. Section 115 of the CPC vests the High Court with the revisional powers, thereby, empowering it to exercise its supervisory power over the subordinate courts within its jurisdiction. However, this Court, having a limited jurisdiction under the said provision is not allowed to enter into the merits of the evidence, nor can it allow additional evidence and only needs to satisfy itself as to whether the requirements of law have been duly adhered by the subordinate court and whether there arises any irregularity as to the failure or exercise of jurisdiction with respect to the order in question. Unless there is an error of law so apparent on the face of the record, or there is an error in exercise of jurisdiction by the subordinate court, the order made by the subordinate court ought not to be interfered with.

22. On the other hand, Order XVIII Rule 17 of the CPC empowers the court to recall any witness and the same can be exercised either at its discretion or the invitation of the parties. The intention behind the provision



is to clarify the existing ambiguities in a case and therefore, the same is to be exercised sparingly and in distinctive circumstances.

23. At this stage, this Court deems it apposite to peruse the findings of the impugned order and the operative portion of the same is reproduced hereinbelow:-

“...It is seen that at no earlier stage, any list of witnesses had been filed by and on behalf of the plaintiff. It is no where case of the plaintiff that her statement had been recorded by the Court by force. Her statement closing the plaintiff evidence has been recorded in the presence of her counsel. Change of new advocate is no ground to open the plaintiff evidence. The affidavit in evidence on behalf of the defendant witnesses have been filed on record since long and copies thereof have also been supplied to Ld. Counsel for the plaintiff earlier.

As per law, it was required on the part of the plaintiff to file the list of witnesses within 15 days from the date of framing of issues. It is not that every time a new counsel is engaged by any party, a de nova trial has to be started as per the whims and fancies of any such newly engaged counsel. Whatever the plaintiff had to say and wanted to prove, she has done so by her examination as PW 1.

In view of above, I do not find any merits in the application under Order XVIII Rule 17 CPC and the same is hereby dismissed...”

24. It is imperative for this Court to understand the scope and relevance of Order XVI Rule 1 of the CPC, which states that the parties shall file the list of witnesses before the Court on such date as the Court appoints and not later than 15 days after the framing of the issues.

25. In light of the same, it is pertinent to look into the observations of this



Court in *Dinesh Jain v. Krishan Kumar Gupta, 2008:DHC:5014*, wherein the intent and relevance of filing of list of witnesses under the said provision has been discussed in detail. The relevant paragraphs of the same are as follows –

“3. A perusal of the above Order 16 Rule 1 shows that the parties are supposed to file list of witnesses within 15 days of framing of issues and they have to obtain summons of such witnesses whose presence is sought in the Court for evidence. Sub-Rule 3 provides that the Court may permit a party to call a witness either by summoning or otherwise whose name does not appear in the list of witnesses, if party shows sufficient cause for omission to mention its name in the list. It is clear that both plaintiff and defendant are supposed to file list of witnesses whom they intend to examine, whether assistance of the Court is needed to summon them or not. There is no escape from filling list of witnesses. Rule 1(A) provides that party may, without applying for summons under Rule 1, bring any witness to give evidence or to produce documents in the Court. This Rule is also subject to Rule 1 sub-Rule 3 which clearly means that the name of witness should be either in the list or the party must show sufficient cause for omission its name in the list.

4. In Lalitha J. Rai Vs. Aithappa Rai, Supreme Court held that where list of witnesses was not filed within prescribed time and plaintiff subsequently files a list stating that he was under bonafide impression that he had already filed the list along with documents and mistake was discovered when they were got ready for trial, the Trial Court committed illegality in refusing to receive the list for summoning the witnesses.

5. Filing of list of witnesses is not a mere formality and is not a superfluous act. List of witnesses if filed by the parties to apprise the Court as well as the opposite party as to what



evidence will be produced by the party to prove its case. If there is a bonafide mistake and sufficient reasons are given by the party, the Court should allow the filling of such a list. However, if no bonafide reasons are given and the party keeps sleeping, there is no reason for allowing a party to file a list of witnesses later on.

6. In the present case, the defendant had not filed list of witnesses. However, defendant was allowed to examine the witnesses without a list. After examining his three witness's defendant filed a list of witnesses along with an application for summoning Mr. P.K. Jain, Advocate stating therein that list of witnesses could not be filed due to oversight and non-advice by counsel for the defendant. Thus the total approach of the petitioner was casual, thinking that filing of list of witnesses was a mere superfluous act and can be done at any point of time. I consider this approach has to be curbed. Filling of list of witnesses must take place as per order 16 Rule 1 and delay in filing list of witnesses can be condoned by the Trial Court only for sufficient reasons. Non-advice by the counsel or oversight is not a sufficient ground."

26. Upon perusal of the aforesaid extracts, it is made out that the requirement of filing of list of witnesses under the said provision is in fact mandatory and not merely a procedural formality as the intention behind the same is to assist the court in recording evidence for speedy disposal of cases. However, when a party fails to file the said list within the statutory requirement of 15 days, sufficient cause needs to be shown for condonation of such delay.

27. In the present case, the issues were framed by the learned Trial Court on 5th August, 2019. However, no list of witnesses was filed before the



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learned Trial Court thereafter. Subsequently, the petitioner was examined on 21st March, 2022 and cross-examined on 18th January, 2023 and 18th May, 2023 and the learned Trial Court closed the plaintiff's evidence on 18th May, 2023. However, it is only on 29th August, 2023 that the petitioner filed a list of witnesses along with an application under Order XVIII Rule 17 of the CPC before the learned Trial Court for re-opening of the plaintiff's evidence.

28. This Court observes that it is an admitted fact that the list of witnesses was filed beyond the stipulated time as prescribed under law. The petitioner has not only failed in filing the list of witnesses within the statutory requirement of 15 days, but has also filed the same after an inordinate delay of 4 years. Moreover, in light of *Dinesh Jain (supra)*, the petitioner cannot take the defence of being a layman and the negligence of the previous counsel as the same does not amount to sufficient cause for filing the list of witnesses after an unreasonable delay. Thus, this Court is of the view that the learned Trial Court was right in dismissing the application under Order XVIII Rule 17 of the CPC for filing the list of witnesses after an inordinate delay of 4 years.

29. Therefore, considering the limited scope of interference under Section 115 of the CPC, this Court is not inclined to exercise its revisional powers since no infirmity or irregularity, or illegality is found in the impugned order.

30. In view of the foregoing discussions of facts and law, the impugned order dated 20th December, 2023 passed by the learned ADJ, North District,



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Rohini Courts, Delhi in CS DJ 250/18 is upheld.

31. Accordingly, the instant petition stands dismissed along with pending applications, if any.

32. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 6, 2024

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Click here to check corrigendum, if any

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