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

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Date of decision: January 03, 2024

+ CM(M) 515/2023

MR. ASHOK KUMAR SHARMA

..... Petitioner

Through: Mr. Bharat Gupta and Mr. Shivam
Singh , Advocates

versus

MR. SUSHIL CHANDER SHARMA & ORS. Respondents

Through: Mr. Subhash Sharma, Advocate along
with respondents

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T (oral)

1. The petitioner has thrice approached this Court to seek summoning of a witness in C.S. 10742/2016 titled as “Shakuntla Devi vs. Ashok Kumar Sharma” from Legal OIC Cell, 505 Army Base Workshop, Delhi Cantt. with record and summoning of the record through witness of Civil Suit titled “Shakuntla Devi vs. Vimla Devi & Ors.” C.S. No. 13224/2016, pending in the Court of learned Additional District and Sessions Judge, (Central) (hereinafter referred to as “ADJ”). In this regard, he was permitted to summon the aforesaid witnesses by this Court vide order dated 08.11.2016 in CRP No. 272/2019 with the direction that the witnesses be examined on one day. Due to various reasons assigned on behalf of the petitioner, the witnesses could not



be examined and he had moved an application under Order XVI Rule 1 read with Section 151 CPC, which was dismissed by the learned ADJ vide order dated 23.11.2022. The petitioner challenged the said order by moving CM(M) 62/2023 and CM APPLS. 1979-80/2023 titled “Ashok Kumar Sharma vs. Sushil Chander Sharma and Ors.”. This Court vide order dated 17.01.2023, permitted the petitioner to summon both the aforesaid witnesses with direction to examine the witnesses for one particular day and unless there are extenuating circumstances, due to which the witnesses are unable to appear, suitable time as per the convenience of the learned Trial Court may be given. The petition was disposed of subject to cost of Rs. 20,000/- to be paid by the petitioner to the respondent within a week.

2. Petitioner herein is the defendant in the aforementioned Civil Suit filed by Mrs. Shakuntla Devi seeking possession of the suit property being portion of first floor of property no. H-72, Shivaji Park, Punjabi Bagh, New Delhi. Deceased plaintiff Shakuntla Devi, now is being represented through her legal heirs i.e. respondents herein before the learned Trial Court.

3. Pursuant to the order dated 17.01.2023 passed by this Court, the petitioner herein filed an application for summoning the two witnesses and original record on 23.01.2023 before the learned ADJ. But as the order dated 17.01.2023 was not produced before the learned ADJ, the application of the petitioner for summoning of witnesses was posted by learned ADJ for date fixed i.e. 17.02.2023 without passing an order for summoning the witnesses.

4. Mr. Puri, learned Senior Counsel submits, in the meanwhile, the learned ADJ after receiving directions from this Court, suo moto took up the application and issued notice to the parties for 07.02.2023 vide order dated 04.02.2023. The petitioner received the said notice on 06.02.2023 mentioning



that his application for summoning the witnesses would be taken up on 07.02.2023. The learned ADJ on 07.02.2023 issued summons for two witnesses for 17.02.2023 in terms of the orders dated 17.01.2023 passed by this Court.

5. It is submitted that unfortunately on 17.02.2023, the learned Presiding Officer was on leave and the case was adjourned to 07.03.2023. One of the summoned witnesses appeared with record of the civil suit, however since the Presiding Officer was on leave he could not be examined.

6. Learned counsel submits that as a matter of abundant caution, there being no directions by the Court and no obligation on part of the petitioner to file another application for summoning, however, in order to save time, he had moved a subsequent application seeking summoning of witnesses on 23.02.2023 which was came up for hearing on 24.02.2023, since his previous application for summoning was listed by the learned ADJ for the date fixed, the counsel for petitioner was under a bona fide belief and impression that this subsequent application for summoning had been listed for date fixed i.e. 07.03.2023, since no date was given on the said application by the learned ADJ.

7. Proceeding to address this Court further, the learned counsel submits that on 27.02.2023, the learned ADJ unilaterally without any notice or intimation to the petitioner or to his counsel took up the subsequent application for summoning of witnesses and directed the petitioner to take steps for summoning of the witness for 07.03.2023. This order was not in the knowledge of the petitioner or his counsel and ultimately on 07.03.2023, the learned Trial Court closed the opportunity of the petitioner to summon the witnesses.



8. Mr. Puri, submits that the petitioner thus, filed the present petition assailing the order dated 07.03.2023 passed by the learned ADJ and consequently, prayed for direction to summon witness from Legal OIC Cell, 505 Army Base Workshop, Delhi Cantt. and for record of the Civil Suit bearing C.S. No. 13224/2016.

9. Learned counsel submits that even though the petitioner had been making every endeavour to summon the witnesses but due to the aforesaid circumstances, the two witnesses of the petitioner could not be examined by him though he was granted opportunity twice by this Court.

10. Mr. Puri further submits that the documents in question which the petitioner is seeking to prove are relevant and germane to the issue and the petitioner has never contemplated to prolong or delay the proceedings in the suit in any manner. Thus, it would be travesty of justice, in case the petitioner is not allowed to prove the said documents which have already been relied upon by a party, who is a defendant in another suit against the same plaintiff. The learned counsel thus, submits for setting aside of the impugned order dated 07.03.2023.

11. Controverting the aforesaid submissions, Mr. Subhash Sharma, the learned counsel for the respondent submits that the present petition is an abuse of process of law as the civil suit titled "*Shakuntla Devi vs. Ashok Kumar Sharma*" is pending since the year 2008 before the learned Trial Court and final arguments on behalf of the respondents have been concluded and the petitioner is in the process of addressing his final submissions. Further, this is the fourth application moved on behalf of the petitioner to summon the two witnesses to prove the salary record of deceased Mr. Rajinder Pal Singh and an official witness to prove the court record of the another case.



12. Insofar as the impugned order dated 07.03.2023 is concerned, the learned ADJ has rightly closed the opportunity of the petitioner to summon the witnesses in terms of the order dated 17.01.2023 of this Court, the present petition is an abuse of process of law and the petitioner cannot be allowed to hold the trial of the case by repeatedly moving petitions on frivolous grounds for examining two witnesses.

13. Upon perusing the record, relevantly the petitioner has been afforded opportunity time and again to summon the witnesses as requested by him, however, there can be no doubt that the petitioner promptly complied with the directions issued by this Court on 17.01.2023 and moved an application before the learned Trial Court to summon the witnesses for their examination as directed. When one of the summoned witnesses had appeared with the record on 17.02.2023, the Presiding Officer was on leave and the case was adjourned to 07.03.2023. Being extra cautious, the petitioner had moved a second application on 24.02.2023 for summoning of witnesses assuming that his previous application for summoning was also listed for date fixed i.e. 07.03.2023.

14. It is clear from the aforesaid that though the petitioner was granted opportunity twice for examination of two witnesses with records, but the purpose could not be fulfilled due to peculiar circumstances. It is not disputed that the petitioner did not make efforts to summon the witnesses, but unfortunately, the evidence could not be recorded by the learned Trial Court.

15. In view of the aforesaid, the petitioner is afforded one more opportunity to examine two witnesses for which the following directions are passed:

- i. The learned Trial Court would permit the summoning of witnesses from army based workshop alongwith the records in original as well



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as the records pertaining to C.S. No. 13224/2016 titled “Shakuntla Devi vs. Vimla Devi & Ors.”

- ii. It is directed that the learned Trial Court would summon the witnesses for a particular date as per its convenience within one month from today and ensure that both the witnesses are examined on the same day.
- iii. The petitioner shall file an appropriate application before the learned Trial Court for summoning both the witnesses.

16. The present petition is allowed with costs of Rs. 25,000/- to be paid by the petitioner to the respondent on the date fixed before the learned Trial Court.

SHALINDER KAUR, J

JANUARY 3, 2024/sds