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

+ CM(M) 2047/2024

CHARAN LAL

..... Petitioner

Through: Mr. Nishant Anand, Ms. Gunjan
Bansal and Ms. Pooja Singh, Advs.

versus

PARDEEP KUMAR & ANR.

..... Respondents

Through: Mr. Ajit Nair, Adv. for R-1.
Ms. Arti Bansal, Adv. for R-2.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

21.05.2024

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**CM APPL. 21194/2024—filed by R-1 for vacation of stay order dt.
06.03.2024**

1. The present application has been moved under Section 151 of the Code of Civil Procedure, 1908 (“CPC”) on behalf of respondent no.1 for vacation of the interim stay granted vide order dated 06.03.2024 by this Court.
2. Learned counsel for respondent no. 1/applicant submits that the suit before the learned Trial Court was filed in the year 2016 and is getting delayed as the final arguments cannot be heard since this Court had directed the learned Trial Court to fix the date of hearing beyond the date fixed by this Court.
3. Learned counsel for the petitioner submits that the interim protection is necessary for the petitioner else his petition will become infructuous.



4. Learned counsel for respondent no.1 submits that considering the above fact, the CM(M) petition, which is next listed for 03.09.2024 may be taken up for disposal today as short controversy is involved in this case.

5. In view of the above submissions, the main petition is taken up for final hearing today.

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6. The petitioner is aggrieved by the order dated 09.02.2024, passed by the learned Additional District Judge-04, North, Rohini Courts, Delhi (hereinafter referred to as “Trial court”) in CS DJ 1626/2016, titled as “*Pradeep Kumar vs. Charan Lal and Anr.*” whereby the application filed by the petitioner herein under Section 151 of CPC for recalling of PW-2 Smt. Rajni Bala for cross examination was dismissed. Additionally, the learned Trial Court closed the right of the petitioner to lead evidence since neither an affidavit in evidence of any witnesses nor any list of witnesses were filed.

7. Petitioner herein is the defendant and the respondent no.1 herein is the plaintiff in CS DJ 1626/2016 which is pending adjudication before the learned Trial Court.

8. The factual background leading to the institution of the present petition reveals that the petitioner is the father of respondent no.1 and the dispute between them pertains to an immoveable property bearing Plot no.263, Sector 34, Pocket A-1, Rohini, New Delhi-110085 (hereinafter referred to as “suit property”). Furthermore, the Delhi Development Authority (“DDA”) is the principal authority of the aforesaid plot and thus, it has been arrayed as respondent no.2.



9. On 16.05.2016, respondent no.1 filed a suit before the learned Trial Court against the petitioner seeking permanent injunction and/or the refund of Rs. 13,95,120/-. Subsequently, issues were framed by the learned Trial Court on 05.10.2016. The matter was listed for first time for recording of plaintiff's evidence (in short "PE") on 24.02.2020. Thereafter, on 17.08.2022, PW-1 Sh. Pradeep Kumar was examined and discharged. The matter was then adjourned for 17.12.2022 for the remaining PE. On that date, the learned presiding officer was on leave and the matter was renotified for 22.12.2022.

10. On the said date of hearing, PW-2 Smt. Rajni Bala was examined-in-chief, however, the cross-examination was deferred as the main counsel of the petitioner was unavailable. Further, a proxy counsel for the petitioner requested for an adjournment and granted one last opportunity to the petitioner to cross-examine PW-2, contingent upon the payment of a cost of Rs. 5,000/- on the next date of hearing and adjourned the matter to 24.12.2022.

11. On that date, the learned counsel for the petitioner expressed his inability to cross-examine PW-2 as he was suffering from fever. Further, he informed the learned Trial Court that Mr. Mohinder Madan, learned senior counsel was the main counsel in the present case who would conduct the cross-examination of the witness. It was also brought to the knowledge of the Court that since 22.12.2022, the said senior counsel is in Hyderabad.

12. Vide order dated 24.12.2022, the learned Trial Court closed the right of the petitioner to cross-examine PW-2 and the matter was put up for remaining PE on 18.03.2023. On the aforesaid date of hearing, the petitioner moved an application under Section 151 CPC seeking to recall



the order dated 24.12.2022, along with an application under Section 151 CPC for waiver of cost imposed on the petitioner via the order dated 22.12.2022. Thereafter, respondent no.1 filed a reply to the said applications. Subsequently, the learned Trial Court heard arguments on both the applications on 12.12.2023 and directed the petitioner to file the evidence affidavit along with a list of witnesses on the next date of hearing.

13. Vide impugned order dated 09.02.2024, the learned Trial Court dismissed the aforesaid applications and consequently, closed the right of the petitioner to lead evidence, as neither an affidavit in evidence of any witnesses nor any list of witnesses were filed. The petitioner is aggrieved by the said order passed of the learned Trial Court and has assailed the same before this Court by filing the present petition under Article 227 of the Constitution of India.

14. Learned counsel for the petitioner submits that the learned Trial Court failed to appreciate the fact that the counsel for the petitioner was present on 17.12.2022 to cross-examine PW-2. However, on that date, the learned Presiding Officer was on leave and the witness could not be cross-examined.

15. Learned counsel also submits that the learned Trial Court failed to appreciate that despite imposing a cost of Rs. 5000/- again on 22.12.2022 at the insistence of the learned counsel for the respondent no.1, the learned Trial Court adjourned the matter for only two days. Furthermore, the learned Trial Court listed the matter for the cross-examination of PW-2 on 24.12.2022, despite being informed that the senior counsel engaged by the petitioner for the cross-examination would not be available on that date as he would be travelling to Hyderabad on 22.12.2022 and would return post



24.12.2022. However, it is submitted that the aforesaid date of hearing was granted by the Court upon the insistence of the learned counsel for respondent no.1.

16. Learned counsel for the petitioner further submitted that the learned Trial Court has acted with a biased approach against the petitioner and the orders dated 24.12.2022 and 09.02.2024 have resulted in miscarriage of justice and violations of the basic and fundamental principle of equity by closing the right of the petitioner to cross-examine PW-2 and further closing the right of the petitioner to lead evidence.

17. Learned counsel submits that the learned Trial Court failed to record the submissions made by the learned counsel wherein it was explicitly conveyed to the learned Trial Court that the petitioner is a senior citizen who is of 91 years of age and has been keeping unwell for approximately 4-5 months and therefore, despite the fact that the evidence affidavit and list of witnesses was prepared by the counsel the same could not be filed before the Ld. Trial Court as the petitioner was not in a position to sign the said documents.

18. The learned counsel for the petitioner further relied upon the following judgments:

- i. ***Deepak vs. Ramesh Sethi, 2022 Live Law (Del) 381.***
- ii. ***Kartar Singh v. State of Punjab, (1994) 3 SCC 569.***
- iii. ***Jayendra Vishnu Thakur v. State of Maharashtra, 20091 7 SCC 104***

19. Conversely, respondents contends that the learned Trial Court closed the right of the petitioner to lead evidence since neither any list of witnesses nor an affidavit in evidence of any witnesses were filed.



Moreover, PW-2 not once but twice had travelled from London to appear before the learned Trial Court for her cross-examination, which could not be conducted as the petitioner took adjournments.

20. At this stage, learned counsel submits that in order not to further delay the trial of its case, he has no objection in case, PW-2 is allowed to be cross examined by respondent no.1 but that should be allowed only on one date of hearing and subsequently, the petitioner may be granted an opportunity to lead his own evidence also after getting one opportunity and the order of the learned Trial Court be set aside, subject to cost.

21. Having considered the above facts and circumstances, the petitioner is granted one opportunity to cross-examine PW-2, as PW-2 is stated to be residing in London, the date for cross-examination accordingly be fixed by the learned Trial Court.

22. Thereafter, the petitioner is also granted a single opportunity to lead its entire defendants evidence, it is made clear that other than the above two dates of hearing, no further opportunity shall be afforded to the petitioner either to cross-examine PW-2 or to lead its own evidence. Hence, the impugned order dated 09.02.2024 is set aside.

23. The petition accordingly is allowed, subject to cost of Rs. 7,000/- to be paid to the respondent no.1 on the next date of hearing before the learned Trial Court. All the pending applications stands disposed of.

SHALINDER KAUR, J.

MAY 21, 2024/ss