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

+ **LPA 210/2024 & CM APPL. 14997/2024**

HARJIT SINGH KENT

..... Appellant

Through: Mr. Sahil Mongia, Mr. Rahul Yadav,
Mr. Shahil Rao and Mr. Abhishek
Yadav, Advocates

versus

SHRI BALBIR SINGH KAINTH

..... Respondent

Through: None

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Date of Decision: 27th March, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present appeal filed under Clause X of the Letters Patent of the then High Court of Judicature at Lahore, which stands extended to the High Court of Delhi, has been filed challenging the order dated 09th February, 2024, passed in CS(OS) 983/2014, whereby the learned Single Judge dismissed the application filed by the Appellant under Section 151 of the Code of Civil Procedure, 1908 ('CPC') for re-opening of the defendant's evidence (i.e., the Appellant herein).

2. It is stated that the suit before the learned Single Judge was being contested by the erstwhile counsel of the Appellant. It is stated that upon change of the erstwhile counsel in the year 2023, the Appellant discovered that the matter was not being contested properly by his erstwhile counsel.



3. It is stated that on 21st March, 2023 the main counsel for the Appellant did not appear before the Joint Registrar in the matter and a proxy counsel marked his appearance. Further, on the statement of the proxy counsel the evidence of the Appellant was closed, even though the list of witnesses dated 11th August, 2015 filed by the Appellant enlisted further proposed witnesses.
4. It is stated that thereafter the Appellant engaged a new counsel and filed an I.A. No. 15059/2023 on 07th August, 2023 seeking for re-opening of the defendant's evidence, which has been dismissed by the learned Single Judge *vide* the impugned order.
5. Learned Counsel for the Appellant states that it is for the fault of the erstwhile counsel for the Appellant that the evidence of the defendant (i.e., the Appellant herein) was closed. He states that as per the list of witnesses dated 11th August, 2015 filed before the learned Single Judge there are more than 5 witnesses which are yet to be examined.
6. He states that the learned Single Judge failed to consider whether the remaining witnesses, which were to be examined would assist in clarifying the evidence led on the issues and for effective adjudication of the matter.
7. He states that the acts and omissions on the part of erstwhile counsel of the Appellant should not be held in prejudice to the rights of the Appellant.
8. We have heard the learned counsel for the Appellant and perused the appeal as well as the suit record.
9. It is noted at the outset that the present appeal filed invoking Letters Patent against the impugned order passed by the learned Single Judge in exercise of her original jurisdiction, is not maintainable. We are proceeding



to decide this matter presuming that the present appeal has been filed under Section 10 of the Delhi High Court Act, 1966.

10. In the list of witnesses dated 11th August, 2015, the Appellant at serial no.5 and 8 is seeking to examine a (unnamed) handwriting expert and summon a witness from the Ministry of Civil Aviation. However, learned counsel for the Appellant fairly admits that there is no handwriting expert report on record. Further a perusal of the reply filed by the Appellant to I.A. No. 15059 of 2023 reveals that purportedly, the witness from Ministry of Civil Aviation is proposed to be summoned to prove the signatures of late Sh. Karan Singh, however, no document bearing disputed signatures of late Sh. Karan Singh is on record.

11. Similarly, with respect to witness at serial no. 6 i.e., (unnamed) Expert Structural Engineer/Architect, learned counsel for the Appellant has not disputed that no report of the alleged Engineer/Architect is on record. So also, with respect to the proposed witness at serial no. 7 i.e., (unnamed) Photography Expert, perusal of the record shows that the Appellant's witnesses DW-1 to DW-3 have not relied upon any photographs during the evidence.

12. Similarly, with respect to Sh. Inderjeet Singh, the son of the Appellant mentioned at serial no. 2, the Respondent in its reply to I.A. No. 15059 of 2023 has stated that due to the Appellant's advanced age, the suit is being defended by the said Sh. Inderjeet Singh and he was present before the Court on each date of hearing including the hearing dated 21st March, 2023. Learned counsel for the Appellant states that the said witness is required to prove that he (i.e., Mr. Inderjeet Singh) has been living on 2nd floor of the suit property since his marriage. In this regard, we have examined the



evidence affidavit of the Appellant who has examined himself as DW-1 and note that the said fact has already been stated by him in his affidavit at 'paragraph 19'. Therefore, evidence on the said issue has already been led by the Appellant.

13. We are of the considered opinion that in view of aforementioned facts, the statement made by the erstwhile counsel before the Joint Registrar on 21st March, 2023 was made after due consideration. The Appellant has failed to show before us the relevance of the aforesaid witnesses.

14. The evidence before the Joint Registrar was closed by the Appellant on 21st March, 2023 and the application seeking to re-open the evidence was filed belatedly on 10th August, 2023 [after seven months]. It is apparent that the Appellant is seeking to stall the suit proceedings which are now listed for final arguments.

15. We therefore, find no merit in the present appeal and the same is dismissed along with pending applications.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MARCH 27, 2024/msh/hp/sk

Click here to check corrigendum, if any