



\$~30

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

+ CM(M) 663/2022 and CM APPL. 30811/2022—stay

SHREE VEETRAG KNITTING MILLS PVT. LTD AND ORS.

..... Petitioners

Through: Mr. Avneet Singh, Adv.

versus

KRISHAN GUPTA AND ANR.

..... Respondents

Through: Mr. Bhaskar Tiwari and Mr.
Ramakant Shukla, Advs.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

27.02.2024

%

1. The present petition has been filed under Article 227 of the Constitution of India impugning the order dated 04.07.2022 passed by the learned ADJ-02, Shahdra District, Karkardooma Court, New Delhi (in short 'Trial Court') in Civil Suit no. 72/2018 whereby the learned Trial Court has imposed the cost of Rs. 10,000/- each on the defendants for not furnishing the affidavit as directed by the learned Trial Court.

2. The learned counsel for the petitioners submits that the respondents herein had moved an application under Section 151 CPC seeking following prayers:-

“A) File an affidavit regarding ownership of the following properties in any manner

(i) 33, Radhey Puri Extention, Delhi;

(ii) 44, Radhey Puri Extension, Delhi;

(iii) Shop No. X/449, Gali No. 0, Ram Nagar, Gandhi



Nagar, Delhi.

(iv) 65, Radhay Puri Extension, Delhi and

(v) 28, Radhey Puri Extension, Delhi.

B) File an affidavit disclosing their assets to the extent that they are made liable to pay in the suit.

C) To deposit in the court money or other property sufficient to answer the claim of the plaintiff or to furnish the security.”

3. On 16.04.2022, the petitioner nos. 1, 2 and 5 filed reply to the said applications. On 21.04.2022, during the course of the arguments on the application under Section 151 CPC, the learned Trial Court directed the petitioners to disclose the status of the ownership of the following properties:-

(i) 33, Radhey Puri Extention, Delhi;

(ii) 44, Radhey Puri Extension, Delhi;

(iii) Shop No. X/449, Gali No. 0, Ram Nagar, Gandhi Nagar, Delhi.

(iv) 65, Radhay Puri Extension, Delhi and

(v) 28, Radhey Puri Extension, Delhi.

4. Consequently, the petitioner nos. 1, 2 and 5 submitted their affidavits on 04.07.2022, however, according to the learned Trial Court, the contents of the affidavits were incomplete and did not disclose the ownership status of the properties, therefore, the affidavits were taken off the record. The counsel for petitioners sought permission to file fresh affidavits disclosing better particulars about the properties which was granted. Simultaneously, the petitioners were burdened with cost of Rs. 10,000/- each, totaling Rs. 60,000/- vide the impugned order. Aggrieved by the impugned order, the petitioners have filed the present petition holding that once the petitioners were granted permission to file fresh affidavits, there was no occasion before the learned Trial Court to have burdened the petitioners with heavy



cost which they are unable to pay. It is also submitted that the fresh affidavits have been filed.

5. The arguments were controverted on behalf of the respondents submitting that the petitioners are deliberately avoiding disclosing the ownership with respect to the aforesaid properties. Therefore, the learned Trial Court had directed them to file the affidavits giving details of the said properties. Subsequently, the petitioners filed the affidavits to conveniently avoid disclosing the required particulars with respect to the ownership status of the properties. It is also submitted that though fresh affidavits have been filed, however, those affidavits are also not as per the directions of the court passed vide order dated 21.04.2022 and hence, does not make complete disclosure with respect to the ownership status properties.

6. While rebutting the arguments, the learned counsel for the petitioners submits that one of the petitioners namely Sonal Jain (petitioner no. 5) has specifically stated before the learned Trial Court that she is the owner of one of the suit properties i.e., Built up portion of property bearing No. 44, measuring 100 sq. yards out of total area of plot of 200 sq. yards situated in the abadi of Radhey Puri Extension, New Delhi-110051 and has also undertaken not to create any third party interest with respect to the said property. It is also submitted that the petitioners had appeared before the learned Trial Court for their examination under Order X CPC as directed by the Court, however, the statements were not recorded.

7. Apart from hearing the arguments, the impugned order has been perused. The learned Trial Court vide order dated 04.07.2022 observed as under:-

“Instead of passing an adverse order of dismissing two



applications of defendants no.3, 4 & 6 and defendants no. 2 & 5 under 1 rule 10(2) CPC, one last and final opportunity is granted to the defendants no.1 to 6 to comply with directions. The defendants are further burdened with cost of Rs.10,000/- each (totaling at Rs.60,000/- out of which Rs.30,000/- to be paid to plaintiff and remaining shall be deposited by them within a registered Society working for Alzheimer patients in the name 'Hope Ek Asha' at State Bank of India, Branch Masjid Moth, New Delhi-110048, A/c No.10263861625, Mobile No.9910065069 within two days).

Put up for compliance as above / appearance of all defendants for their examination and arguments on pending applications of defendants subject to deposition of costs as condition precedent.”

8. It is evident from the impugned order that the learned Trial Court has directed the petitioners for filing of the affidavits to know the correct credentials of the properties for which directions had been passed, however, information disclosed in the affidavits was found to be incomplete and not conforming to the directions passed by the learned Trial Court. Therefore, the petitioners were granted another opportunity to file fresh affidavits and were also burdened with the cost.

9. In view of the above, as the petitioners are stated to have filed fresh affidavits which again have been disputed by the respondents on the ground that they are not conforming to the directions of the learned Trial Court. Moreover, learned Trial Court has also directed the petitioners to file affidavits again with better particulars. It appears that the said issue has yet not been decided by the learned Trial Court with respect to fresh affidavits. In these circumstances, the petitioners are at liberty to move an appropriate application before the learned Trial Court for waiver of the cost as imposed



vide the impugned order dated 04.07.2022 in wake of the fresh affidavits furnished or are yet to be furnished which shall be decided by the learned Trial Court after considering the entire circumstances. The observations made in the present order shall not tantamount to the expression of merits of the case.

10. The petition along with the pending application stands disposed of.

SHALINDER KAUR, J

FEBRUARY 27, 2024
SU