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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 2534/2024, CM APPL. 27648/2024 (Exp.), CM APPL.
27649/2024 (Stay) & CM APPL. 27650/2024 (Exp.)

PRIYANKA KALRA

..... Petitioner

Through: Ms. Samridhi Arora, Ms. Sanjana &
Ms. Anamika Ratan, Advs.

versus

DEEPA BHATIA AND ORS

..... Respondents

Through: Mr. Rahul Bakshi, Adv. for R-1 & 2
with respondents in person.
Mr. Bharat Gupta, Adv. for R-3 & 4.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

09.05.2024

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1. The present petition has been filed under Article 227 of the Constitution of India impugning the order dated 02.04.2024 passed by the learned Additional District Judge -01, South West, Dwarka Courts, Delhi in suit bearing no. CS DJ ADJ 171/2016 (15435/16) titled as "*Priyanka Kalra vs Deepa Bhatia & Ors.*" whereby the application of the petitioner under Section 151 Code of Civil Procedure, 1908 ("CPC") seeking to reopen plaintiff evidence was dismissed.

2. The learned counsel for the petitioner submits that the petitioner in 2016 had filed the present suit against the respondents for specific performance of an agreement to sell dated 14.07.2010 which pertained to a sale of flat of respondent no. 1 to the petitioner. The said suit is pending adjudication before the learned Trial Court.



3. Learned counsel submits that in the present suit before the learned trial court, the matter was at the stage of plaintiff evidence and PW2 had been cross-examined on 20.01.2024 and the matter was posted for 13.03.2024.

4. Learned counsel submits that on 05.01.2024, the petitioner engaged a new counsel and asked the erstwhile counsel to transfer all the case files. However, not all necessary documents were transferred. Consequently, the petitioner sought to apply for the certified copies of the documents.

5. The learned counsel also submits that a criminal case bearing case no. Cr. Case 2972/2019 is registered against the respondents which pertains to the charges under sections 420/34/120B of Indian Penal Code, 1860 revolving around the same subject matter and the proceedings of which are currently *sub-judice* before the Learned Metropolitan Magistrate, Saket ("M.M"). Thus, the new counsel, applied for certified copies of documents in the criminal case on 05.01.2024 to potentially summon additional witnesses in the present matter before the learned trial as the forensic evidence and the opinion qua the report dated 17.01.2017 by Sh. Ami Lal Daksh is in favour of the petitioner which made it necessary for him to be examined as PW6 in the present civil suit as he was one of the prime witnesses in the said criminal case. Also, certified copies of the documents was also applied for the Civil Case pending in the Court of learned ADJ, Dwarka on 29.01.2024.

6. Furthermore, submits that the copy of the register of Cash and VPP payments maintained by the Head Vernacular Clerk (Copying Supervisor) shows the criminal case file titled as "*State vs Deepa Bhatia*" Case no. 2972/2019 as untraceable and showed that the matter was put up for further



proceedings on 15.03.2024.

7. The learned counsel in support of his case also contends that the counsel for the petitioner tried to expedite the process of tracing the file and receiving certified copy of the criminal case but the courts were closed from 8-10th March, 2024 on account of public holidays and thereafter on 11th March, 2024 when he approached the Copying Agency and it was informed by the registry that the copy is yet to be stamped and it was only on 12.03.2024 that the petitioner received the certified copy of the said criminal case, a day prior to the date of order closing the plaintiff evidence i.e. 13.03.2024.

8. It is also the contention of the petitioner that no notification regarding the preparation of the certified copy was received via SMS from the Copying Agency. In the meanwhile, the case was listed before the learned Trial Court on 13.03.2024 for further plaintiff evidence, however, the proxy counsel sought an adjournment as the certified copies of the documents were not received in time and also on the ground that the counsel is engaged before the High Court and the Supreme Court, even a passover was requested which was not granted by the learned Trial Court. It proceeded to close the right of the petitioner to lead plaintiff evidence on the ground that as many as 19 adjournments have been sought by the plaintiff. However, learned Trial Court did not consider that most of the adjournments pertained to the period of Covid-19 Pandemic.

9. Learned counsel submits that petitioner filed an application under 151 CPC on 27.03.2024 seeking to reopen the examination of plaintiff's witnesses and for recording of evidence which came to be dismissed vide the impugned order dated 02.04.2024 and the D1W1 was examined in chief



and partly cross-examined.

10. Learned counsel for the respondent no. 1 & 2 appearing on advance notice, accepts notice. It is submitted that a short question arises in the present petition, therefore, the arguments can be addressed today without filing any reply or written submissions.

11. Learned counsel for the respondents submits that petitioner herein has adopted a cavalier approach in examining its witnesses and the sole purpose had been to delay the proceedings as they are enjoying stay on the property. Further, the petitioner has raised a false plea that her counsel was engaged in urgent matter before this Court and the Supreme Court whereas the date of listing of her matter before this Court was already in her knowledge which she never brought to the notice of the learned Trial Court and subsequently tried to take a deliberate adjournment on the false plea.

12. The learned counsel also submits that the petitioner is challenging the order dated 02.04.2024 which is an attempt to revive the right closed to lead plaintiff evidence which was closed on 13.03.2024, however, the said order has not been impugned before this Court. Moreover, the witness which the petitioner seeks to summon were summoned before the learned Trial Court on a prior date on which date the three witnesses were present but neither the counsel appeared nor the petitioner appeared so that the witnesses could have been examined. This goes to show the conduct of the petitioner being malafide.

13. To conclude the arguments, the learned counsel submitted that over a period of 9 years, the petitioner had taken several adjournments not only for the purpose of recording of the evidence but in between due to her non-appearance, the suit was dismissed for non-prosecution also. It is further



submitted that at this stage, in case the witnesses are allowed to be summoned afresh, it will further delay the trial which shall be highly prejudicial to the interest of the respondents. Hence, in these circumstances, the present petition is not maintainable as the petitioner has not come before this Court with clean hands.

14. Submissions heard. Impugned order passed by learned Trial Court and the record perused.

15. Pertinently, the case before the learned Trial Court was at the stage of plaintiff's evidence whereby PW-2 was under cross examination on 20.01.2024. The matter was posted for further cross examination on 13.03.2024 when some proxy counsel appeared on behalf of the petitioner and submitted that the main counsel was not available. The learned Trial Court after perusing the record has observed that the petitioner had already availed 19 effective opportunities and still more time was being sought to lead evidence. The learned Trial Court accordingly, declined the request of the proxy counsel and closed further evidence to be lead on behalf of the petitioner and the case was adjourned for recording of defendant's evidence. Subsequent thereto, the petitioner moved an application under Section 151 CPC for recall of the order dated 13.03.2024 thereby seeking permission to lead further evidence. In the application, petitioner had made similar submissions as has been made before this Court.

16. The learned counsel for the petitioner also submitted that the plaintiff's evidence could not be concluded timely due to the fault of the erstwhile counsel because of which the petitioner had to engage a new counsel.

17. It is submitted by learned counsel that since thereafter, the petitioner



has been diligently handling his case so that further delay is not caused, however, due to the fault of the previous counsel, the petitioner should not be allowed to suffer.

18. Learned counsel also submitted that when the respondent started with its evidence in defence, the petitioner had already cross examined defence witnesses, which also goes to show that the petitioner was not interested to examine any further witnesses on its behalf.

19. The petitioner had also submitted that three official witnesses i.e. one is Ahlmad from Saket Court, second is Deputy Director (Documents), Truth Lab, Safdarjung Enclave and the third is from RFSL Chanakyapuri, New Delhi are to be summoned and examined by the petitioner.

20. Having considered the above submissions and in the interest of justice, a single opportunity is afforded to the petitioner to summon all the above three witnesses on the next date of hearing fixed before the learned Trial Court or any other date to be fixed by the learned Trial Court as convenient to its board, subject to cost of Rs. 30,000/- to be paid to the respondents by the petitioner. Learned Trial Court to ensure that no other opportunity than the date fixed by it shall be granted to the petitioner to lead its evidence. The learned Trial Court to grant a short adjournment so that trial is not further delayed.

21. In view of above, petition as well as pending applications, if any, stands disposed of.

SHALINDER KAUR, J.

MAY 09, 2024/ab