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

+ CM(M) 2613/2024, CM APPL. 30196/2024—stay, CM APPL. 30197/2024—Exp. From filing complete TCR

HARPREET KAUR SETHI

..... Petitioner

Through: Ms. Rekha Rustagi with Ms. Mitanshi Rustagi, Advs. with petitioner in person.

versus

GURCHARAN KAUR (SINCE DECEASED) THROUGH HER

LRS.

..... Respondent

Through: Mr. Prag Chawla with Ms. Muskan Aggarwal, Advs.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

20.05.2024

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1. The present petition under Article 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure, 1908 (“CPC”) has been filed impugning the order dated 15.03.2024, passed by the learned Additional District Judge-12, Tis Hazari Courts, Delhi (“Trial Court”) in CS DJ No.9964/2016 whereby the application filed on behalf of the petitioner under Order XVIII Rule 2 read with Section 151 of the CPC, for recalling the order dated 19.12.2023 and being allowed to lead defendant’s evidence was dismissed.

2. The plaintiff had filed the present suit for possession, damages and



permanent injunction for the suit property bearing D-15 A, Jhilmil Colony, Shahdara, Delhi against the husband of the petitioner, who is defendant no. 1, and the petitioner herein, who is the defendant no. 2, before the learned Trial Court, claiming ownership rights of the suit property. Summons for settlement of issues were executed on the petitioner and her husband and they appeared before the learned Trial Court and contested the suit. On the pleadings of the parties, issues in the suit were framed on 22.11.2018. Thereafter, the plaintiff concluded her evidence on 13.02.2020, after which the matter was listed for defendant's evidence. During the trial, the plaintiff expired and her legal heirs have been brought on record before learned Trial Court.

3. The matter came up for defendant's evidence for the first time on 27.07.2023, which was then adjourned to 14.09.2023 as the petitioner failed to lead her evidence. The learned Trial Court closed the opportunity of the defendants to lead evidence vide the order dated 19.12.2023. The petitioner thereafter engaged a new counsel and an application under Order 18 Rule 2 read with Section 151 of the CPC was moved on 11.01.2024 to recall the order dated 19.12.2023 with permission to lead evidence, which came to be dismissed on 15.03.2024 by the learned Trial Court. Now, the petitioner has filed the present petition to challenge the said order.

4. Ms. Rekha Rustagi, learned counsel for the petitioner submits that due to COVID-19 pandemic, after 15.03.2020, physical hearings in the Court were not being conducted and mostly, matters were being taken through video-conferencing. Thus, the matter could not be taken up for evidence. Pertinently, the physical appearances resumed after 28.02.2022, therefore, prior to the said date, the petitioner could not lead defendant's evidence.



5. Learned counsel also submitted that during the second wave of COVID-19 pandemic on 31.03.2021, the defendant no. 1 died and his legal heirs were substituted on 27.04.2023. Thereafter, the matter was once again listed for defendant's evidence on 27.07.2023.

6. Learned counsel further submitted that as the petitioner failed to file the evidence affidavit on the said date of hearing, the learned Trial Court posted the matter to 14.09.2023 and cost of Rs. 2,000/- was imposed on the petitioner.

7. The learned counsel submitted that on 14.09.2023, the evidence affidavit along with application under Order VIII Rule 1A(3) CPC was filed. The matter came to be listed before learned Trial Court for defendant's evidence on 19.12.2023.

8. Learned counsel further submitted that unfortunately, on the said date of hearing, the main counsel for the petitioner and other defendant was not available and the associate advocate requested for an adjournment as certified copies of some documents were required to be produced in evidence but could not be obtained. Subsequently, from the official website, the petitioner obtained a true copy of the order dated 19.12.2023 and came to know that learned Trial Court failed to consider all the above facts and closed the opportunity of the defendant to lead evidence.

9. Learned counsel further submitted that since the death of her husband, who is defendant no. 1, she could not afford a counsel and therefore, approached Delhi State Legal Service Authority for legal assistance, which was provided to her and thereafter, she moved application under Order 18 Rule 2 CPC seeking permission to lead defendant's evidence. The learned counsel also submitted that unfortunately, the counsel, who was appointed



by Delhi State Legal Service Authority suffered a medical emergency and another counsel was appointed by DSLSA, who failed to attend the Court and the application of the petitioner was dismissed on 15.03.2024.

10. The learned counsel submitted that learned Trial Court without noting aforementioned facts and circumstances, unjustifiably observed that the matter was fixed for DE since 16.10.2022 and no witness had been examined till 19.12.2023, therefore, erred in closing the evidence of the petitioner. Reliance is placed upon the judgment of the Hon'ble Supreme Court in the matter of **K. K. Velusamy vs. N. Palaanisamy**, 2011 SCC OnLine SC 528.

11. The submissions were controverted on behalf of the respondent by submitting that the suit was filed in the year 2005 and for last 3 years, the matter has been fixed for defendant's evidence. The petitioner was not deliberately filing the evidence affidavit and has failed to file list of witnesses till date.

12. Mr. Prag Chawla, learned counsel submitted that the petitioner has raised frivolous grounds without supporting the same with any documents and thus, no cogent reason has been explained, even in the application moved under Order 18 Rule 2 CPC to recall the order dated 19.12.2023. Therefore, the learned Trial Court has rightly closed the right to lead defendant evidence and subsequently, dismissed the application under Order 18 Rule 2, which infact is in the form of a review application.

13. Submissions heard. Record and impugned order perused.

14. The respondent submitted the copies of the orders passed by learned Trial Court on different dates, which reveals that the evidence of the plaintiff came to be closed on 13.02.2020 and the matter was listed for conducting



defendant's evidence on 16.04.2020. The petitioner was directed to file list of witnesses within 7 days and to serve the advance copy of evidence affidavit along with list of witnesses to the plaintiff atleast two weeks before next date of hearing through e-mail failing which cost of Rs. 3,000/- shall be imposed on her. Pertinently, the first phase of COVID-19 had set in before next date of hearing and Courts were functioning either through video-conferencing or hybrid mode.

15. On 30.09.2021, the learned Trial Court was informed about the death of defendant no. 1 i.e. husband of the petitioner as the details of the legal heirs were not furnished, therefore, an application for substitution of legal heirs could not be moved. The learned Trial Court then granted four weeks time to move appropriate application. The application was allowed on 27.04.2023 and the legal heirs were substituted, thereafter, the matter was listed for defendant's evidence on 27.07.2023.

16. On the said date of hearing, a new counsel had appeared on behalf of legal heirs of deceased defendant no. 1 and the petitioner had not filed evidence affidavit. Thus, the learned Trial Court granted a final opportunity to the defendants to lead evidence, subject to cost of Rs. 2,000/-. On 14.09.2023, at the request of the counsel for the defendants, the cost was reduced to Rs. 1,000/-, which was paid and the evidence affidavit of DW-1 was filed. An opportunity was granted to the defendant to file evidence affidavit of other witnesses and the matter was listed for defendant evidence on 19.12.2023. On the said date of hearing, the petitioner and others had sought adjournment for defendant evidence as some documents could not be obtained. Accordingly, the learned Trial Court was not willing to adjourn the matter further closed the right of the petitioner to lead defendant's



evidence.

17. Needless to say, even after excluding the period of COVID pandemic and the time taken for substitution of legal heirs of defendant no. 1, the petitioner did not diligently pursue to lead her evidence. Even after filing of the affidavit, the same could not be tendered in evidence since the petitioner requested to bring on record certain documents.

18. However, having considered the submissions and totality of facts of circumstances of the present case, in the interest of justice, a single opportunity is granted to the petitioner to lead her entire evidence either on next date of hearing or any other date to be fixed by learned Trial Court as convenient to its Board, subject to a cost of Rs. 7,000/- to be paid to the respondent before the learned Trial Court on the next date of hearing.

19. In view of the above, impugned orders dated 19.12.2023 and 15.03.2024 are set aside. Petition is allowed accordingly. Pending application stands disposed of.

SHALINDER KAUR, J.

MAY 20, 2024/ss