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

+ **FAO(OS) 74/2024 & CM APPL. 30588-30589/2024**

**CHETAN PURI AND
ANR**

..... Appellants

Through: Mr. Manish Vashisht, Senior
Advocate with Mr. Rajesh Rawal and
Mr. Vanshay Kaul, Advocates

versus

SUNITA REKHI AND ORS

..... Respondents

Through: Mr. Aquib Ali, Ms. Amreen Khatiq
and Mr. Shah Nawaz, Advocates
Mr. Bharat Gupta, Mr. Varun Tyagi
and Mr. Shivam Singh, Advocates for
R-2

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Date of Decision: 21st May, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T(ORAL)

CM APPL. 30589/2024 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

FAO(OS) 74/2024 & CM APPL. 30588/2024

1. Present appeal filed under Section 10 of the Delhi High Court Act, 1966 ('Act of 1966') challenges the impugned order dated 22nd April, 2024, passed by the learned Single Judge of this Court in CS (OS)



1789/2006, whereby two separate interlocutory applications¹ filed by Respondent Nos. 1 and 2 herein, to recall Appellant No.1, i.e., DW-2 for further cross-examination has been allowed.

2. The underlying suit has been filed by Respondent Nos. 1 and 2, seeking partition of the immovable properties on the assertion that the same form part of an HUF.

3. It is a matter of record that during the cross-examination of Appellant No. 1 i.e., DW-2 the counsel for Respondent No. 2 had made enquiries with respect to the bank account statement of Appellant No. 2. DW-2 during the cross-examination stated that the bank statements are in his possession and he can produce the same before the Court. Accordingly, DW-2 was directed to produce the bank statements for the period starting from 01st January, 2011 till date. Admittedly, DW-2 filed the bank statements on 06th June, 2023, albeit, after the completion of his cross-examination.

4. In these circumstances, Respondent Nos. 1 and 2 filed two separate interlocutory applications seeking to recall DW-2 for cross-examining him on the entries in the aforesaid bank statements.

5. The learned Single Judge *vide* impugned order dated 22nd April, 2024 allowed the said applications and granted one opportunity for further cross-examination of DW-2 to the limited extent of the bank statement. The learned Single Judge has directed that no question beyond the bank statement shall be permitted to be put to DW-2.

6. Learned senior counsel for the Appellants states that the grounds pleaded by Respondent Nos. 1 and 2 in the interlocutory applications for

¹ I.A Nos. 18377/2023 and 19159/2023



seeking further cross-examination of DW-2 do not justify the recall. He states that the legal process was not followed by Respondent Nos. 1 and 2 for seeking the production of the bank statement and therefore, Appellant No. 1 cannot be directed to step into the witness box again. He states that Appellant No. 1 apprehends that Respondent Nos. 1 and 2 shall not conclude the cross-examination in a time-bound manner and cause undue harassment to the witness.

7. In reply, learned counsel for Respondent Nos. 1 and 2 state that they undertake that they will not seek any adjournment before the Local Commissioner and conclude the cross-examination of DW-2 as per the directions in the impugned order. They further state that they will conclude the cross-examination in a maximum of two hearings between both of them.

8. Having heard the learned counsel for the parties, we are of the considered opinion that the impugned interlocutory order is a procedural order and does not satisfy the test of a judgment within the meaning of Section 10 of the Act of 1966. The discretion exercised by the learned Single Judge in permitting further cross-examination of DW-2 during the course of trial does not warrant any interference in the present appeal. The present appeal is therefore not maintainable.

9. At this stage, the learned senior counsel for the Appellants states that the Appellants may be granted liberty to assail the impugned order at the stage of final judgment. We accordingly, clarify that the Appellants will be at liberty to challenge the impugned order at the final stage in accordance with Order XLIII Rule 1A CPC, in case the final decree is against the Appellants. We further direct that Respondent Nos. 1 and 2 as well are bound down to the statement made before this Court.



2024:DHG:4203-DE



10. The present appeal is disposed of with the aforesaid liberty reserved to the Appellants.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 21, 2024/hp/AKT

Signature Not Verified

Signed By: MAHIMA
SHARMA
Signing Date: 22.05.2024
18:39:47

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