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

+ CM(M) 1368/2022, CM APPL. 52853/2022--stay

ASHA AND ANOTHER

..... Petitioners

Through: Mr. Parikshit Mahipal, Adv.

versus

SMT PARMESHWARI DEVI SINCE DECEASED THROUGH LRS

..... Respondent

Through: Mr. A.K. Mishra, Mr. Anik
Srivastava and Mr. Sudhanshu
Dwivedi, Advs.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

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21.02.2024

1. The present petition under Article 227 of the Constitution of India read with Section 115 of Civil Procedure Code, 1908 (CPC) has been filed by the petitioners inter alia impugning the order dated 07.11.2022 passed by learned Civil Judge, Central, Tis Hazari Courts, Delhi (in short 'Trial Court') in CS No. 3106/2016 titled as 'Asha & Anr. vs. Smt. Parmeshwari & Ors.' whereby the learned Civil Judge has disposed of four applications dated 23.09.2013, 28.09.2013, 07.09.2018 and 04.01.2019 moved on behalf of the petitioners. Petitioners herein are the plaintiffs before the learned Trial Court.

2. It is submitted that the petitioners herein filed suit for declaration and permanent injunction against the respondents herein on 05.04.2004. The said suit was contested by the respondent no. 1, 2 and 4 by filing of written



statement along with documents on 05.05.2005 and respondent no. 3 was proceeded ex-parte vide order dated 13.10.2010. Subsequently, issues were framed vide order dated 11.08.2010. It is further submitted that the petitioners filed an application under Order VII Rule 14(3) CPC seeking permission to produce certain documents. Eventually, on 18.01.2018 the right of cross-examination of PW-2 Ms. Meenu by respondent no. 1,2 & 4 herein was closed and on 30.05.2018, petitioners' evidence was closed too.

3. It is further submitted on behalf of the petitioners that as a consequence to closing of their evidence before the learned Trial Court, petitioners filed handwritten application dated 07.09.2018 for reopening of evidence of PW-2 Ms. Meenu as well as to file on record additional documents. Another handwritten application dated 04.01.2019 was filed by the petitioner themselves before the learned Trial Court seeking permission to file on record the family photograph of the petitioners who are also plaintiffs before the learned Trial Court. Petitioners also filed an application under Order XXXII Rule 1, 12 and 15 read with Section 147 CPC along with disability certificate of the petitioner no. 2 herein along with amended memo of parties.

4. It is further submitted on behalf of the petitioners that finally, vide impugned order dated 07.11.2022, the learned Trial Court dismissed petitioner's applications dated 23.09.2013, 28.09.2013, 07.09.2018 and 04.01.2019. On the contrary, application dated 02.07.2022 of the petitioners herein under Order XXXII Rule 1, 12 and 15 read with Section 147 CPC was allowed vide the same impugned order. However, the application dated 10.09.2018 for additional documents filed by the respondent no. 1,2 & 4 herein was allowed.



5. At this stage, learned counsel for the petitioners submits that they are not pressing the applications dated 23.09.2013 and 28.09.2013. However, the two hand written applications filed by the petitioners dated 07.09.2018 and 04.01.2019 are being pressed since an application moved on behalf of the respondent no. 1, 2 & 4 under Order VIII Rule 1A CPC was allowed.

6. It is submitted that the petitioners could not bring on record the vaccination certificate, birth certificate and adhaar card of petitioner no. 2 and a family photograph which are necessary documents for deciding the real controversy between the parties.

7. It is submitted by the counsel for petitioners that despite various opportunities granted to the respondents herein, the respondents failed to cross examine PW2 and ultimately the right of the petitioners for further examination of his witnesses was closed. The petitioner no. 1 was not having appropriate legal assistance therefore, she could not bring the list of documents on record and also could not file an appropriate application, and therefore, she herself filed these applications in her own handwriting. Thus, in the said circumstances of the case, the impugned order to this effect be set aside and the petitioners be allowed to place on record these above four documents and PW2 be allowed for further cross examination by the respondents.

8. The submissions have been strongly refuted on behalf of the respondents submitting that the petitioner no. 1 has been sufficiently represented through a legal aid counsel; therefore, the applications were moved with the sole purpose of delaying the trial. Moreso, the applications in themselves are not maintainable as they are not supported with any affidavit of the petitioner no. 1. It is also submitted that PW2 could not be



cross examined as PW2 failed to appear for her cross examination before the learned Trial Court and the petitioners were granted various opportunities and also subjected to cost.

9. It is further submitted that at this belated stage, the documents cannot be allowed to be brought on record and the evidence which the petitioners had closed themselves cannot be allowed to be re-opened at this stage because that will prejudice the case of the respondents. Learned counsel further submits that the case is now at the stage of defendant's evidence which is listed for 04.06.2024.

10. It is relevant to reproduce Order VII Rule 14 CPC, which reads as under:-

“Documents relied on in Plaint.- Production of document on which plaintiff sues or relies

(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such documents not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.”



11. It is the submission of the petitioners that in the peculiar circumstances of the case, the four necessary documents at the appropriate stage could be produced before the learned Trial Court. However, the petitioners though non-legal persons but being vigilant about their rights moved the handwritten applications and were not aware about the technicalities of law that the application is to be supported with an affidavit.

12. In view of the aforesaid submissions, circumstances of the case and in the interest of justice, by way of last opportunity, the petitioners are permitted to place the four documents i.e., the original birth certificate, original adhaar card, original vaccination certificate of petitioner no. 2 and family photograph, if already not filed on record within two weeks from today with advance copy to the respondents. The petitioners herein are also afforded one last opportunity for concluding cross examination of PW2 on the date already fixed before the learned Trial Court. It is made clear that no other opportunity for cross examination of PW2 shall be granted other than the date already fixed by the learned Trial Court.

13. With these observations, the petition stands disposed of along with pending application, subject to cost of Rs. 5000/- imposed on the petitioners to be paid to the respondent on the next date before the learned Trial Court.

SHALINDER KAUR, J.

FEBRUARY 21, 2024
SU/DP