



2024:DHC:5387



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

%

Judgment reserved on: 06.05.2024
Judgment pronounced on: 22.07.2024

+ CM(M) 2112/2023, CM APPL. 66211/2023—stay, CM APPL. 66213/2023—Exp.from filing TCR

HUMA SAAD

..... Petitioner

Through: Ms. Beenashaw N. Soni, Mr. Joby P. Varghese, Ms. Hina Bhargava, Mr. Sarthak Sharma, Mr. Abhishek Gaimd, Mr. Pankaj and Ms. Mansi Jain/ Ann Joseph, Advs.

versus

ASHOK KUMAR KHATTAR

..... Respondent

Through: Mr. Ashok Tobria and Mr. Pradeep Kumar Pathak, Advs.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The present petition revolves around an application filed by the respondent under Order VIII Rule 1A of the Code of Civil Procedure, 1908 (in short “CPC”) seeking to place certain additional documents on record. Vide impugned order dated 13.12.2023, the aforesaid application was allowed subject to a cost of Rs. 10,000/- by the learned Additional District Judge-02, South-East District, Saket Court, New Delhi (in short “Trial



Court”) in C.S DJ no.502/19, titled as “*Huma Saad vs. Ashok Kumar Khattar*”.

2. To put it succinctly, the relevant facts are that on 03.06.2019, the petitioner filed a suit for specific performance, possession and permanent injunction in respect of entire third floor along with half undivided roof rights (front portion) and the right to park one car in the driveway of property bearing no. 270, Sukhdev Vihar, New Delhi-110025 (in short “suit property”). Apart from this, there is another litigation going on between the parties, the specifics of which are not relevant to the adjudication of this case.

3. The respondent contested the suit by filing his written statement on 21.08.2019. Thereafter, the petitioner moved an application under Order VII Rule 14 CPC seeking permission to place on record additional documents. Vide order dated 13.03.2020, the learned Trial Court allowed the said application and framed issues following the completion of the pleadings.

4. Subsequent thereto, the petitioner filed her affidavit in examination-in-chief along with the list of witnesses. After recording the statement of witnesses, the petitioner closed her evidence on 18.10.2023.

5. On the said date, the respondent filed his list of witnesses which was allowed by the learned Trial Court despite opposition from the petitioner. On 07.12.2023, the respondent moved an application under Order VIII Rule 1A CPC for placing on record additional documents on the ground that after filing of the suit in 2019, the respondent lost his wife due to Covid-19 pandemic and the respondent suffered certain health issues.



Therefore, he was not able to place the documents on record at that time. In response, the petitioner also filed reply to the aforesaid application.

6. Vide impugned order dated 13.12.2023, the learned Trial Court allowed the said application subject to a cost of Rs. 10,000/- to be paid by the respondent to the petitioner. Thus, aggrieved by the said order the petitioner has assailed the same before this Court by filing the present petition under Article 227 of the Constitution of India.

Submissions by the Petitioner

7. Ms. Beenashaw N. Soni, the learned counsel for the petitioner submitted that the learned Trial Court overlooked the fact that all the alleged documents sought to be produced by way of an application under Order VIII Rule 1A CPC were in the knowledge and possession of the respondent since the beginning and were intentionally withheld in order to mislead the Court and to prejudice the case of the petitioner.

8. Learned counsel submitted that the learned Trial Court failed to appreciate that the respondent did not provide any sufficient cause in his present application for failing to produce these documents at the appropriate stage such as either at the time of filing the written statement or atleast before framing of the issues.

9. It was next contended by the learned counsel that by allowing the respondent to file documents at their discretion especially when it causes serious prejudice to the case of the petitioner, the learned Trial Court overlooked the respondent's admitted negligence and causal approach in this matter.

10. Learned counsel submitted that the learned Trial Court failed to recognize that the documents being introduced at this belated stage are



beyond the scope of pleadings and were not even mentioned in the entire written statement filed by the respondent. Further, the averments in the written statement are vague and do not correspond to any of the documents such as alleged WhatsApp chats and emails being introduced now. Not only this, there is also no mention of specific dates, individuals involved in the alleged WhatsApp or email exchanges or other essential details, rendering the entire allegation vague.

11. It was further submitted that the learned Trial Court failed to recognize that the present suit was filed in 2019, well before the onset of Covid-19 pandemic in March 2020. Further, the written statement of the respondent was filed on 21.08.2019 and even the issues were framed on 13.03.2020, prior to the pandemic. Hence, there arose no occasion for the learned Trial Court to have believed false stand of the respondent in not filing the documents at the appropriate stage. In fact, the blatant lies of the respondent got exposed from the fact that not even a single medical record was filed corroborating such a vague stand taken in relation to health of the respondent who has otherwise been diligently pursuing criminal complaint against the petitioner all throughout and continued to appear in the Criminal Court.

12. It was contended that the learned Trial Court failed to appreciate that the judgment relied upon by the petitioner was ***Ramesh Kumar vs. Sangeeta Khanna, MANU/DE/3834/2014*** and not ***Rakesh Kumar vs. Geeta, MANU/DE/3834/2015*** as recorded in the impugned order. This error demonstrates a lack of application of mind and has caused serious prejudice to the case of the petitioner at this belated stage.



13. Learned counsel submitted that the case of the petitioner is severely prejudiced, as she has been permitted to lead additional evidence and given liberty to amend the plaint. This implies that the entire suit will have to be adjudicated again without any fault of the petitioner. Moreover, the petitioner could not have been asked to amend the plaint at this belated stage especially when her evidence is already complete.

14. Finally, the learned counsel submitted that the learned Trial Court failed to appreciate that the alleged documents sought to be produced do not even pertain to the petitioner and were never shared by her. None of these documents were presented to the petitioner during her cross-examination. Therefore, third-party documents are being introduced and the petitioner has been significantly prejudiced by the issuance of the impugned order in such a mechanical manner.

15. Learned counsel for the petitioner placed reliance on the following judgments of this Court:-

- i. *Harkesh Singh vs. Ved Raj*, MANU/DE/0303/2020.
- ii. *Ramesh Kumar and Ors. vs. Sangeeta Khanna*, MANU/DE/3834/2014.
- iii. *Manohar Lal and Ors. vs. Tara Chand and Ors.*, MANU/DE/3525/2021.
- iv. *Sandeep Garg vs. Praveen Kumar Bansal*, MANU/DE/0836/2023.
- v. *Nand Kishore vs. P.S. Julka*, MANU/DE/0843/2023.
- vi. *Inter Ikea Systems BV vs. Quess Corp. Limited*, MANU/DE/7194/2023.
- vii. *Naresh Arneja vs. Atul Gupta*, MANU/DE/3509/2022.

Submissions by the Respondent



16. In response, Mr. Ashok Tobria, the learned counsel for the respondent submitted that soon after filing the present suit in 2019, the world was affected by Covid-19 pandemic. During this time, the respondent unfortunately lost his wife from Covid on 26.11.2020. While he was recovering from the pain and agony of losing his wife, he also contracted Covid. As a result, the respondent faced serious complications and multiple health issues, which prevented him from tracking and locating all the old emails and chat exchanges between him and the petitioner concerning the suit property from June, 2016 to May, 2019. Therefore, it is submitted that the respondent managed to retrieve these old communications which are relevant to the present matter and wishes to file the same on record.

17. Learned counsel also submitted that the additional documents mentioned in the present application under Order VIII Rule 1A CPC are highly relevant and will help the Court in adjudicating the present matter based on the documentary evidence. Therefore, it is crucial to officially record these documents for the fair adjudication of the matter and in the interest of justice.

18. Learned counsel submitted that it is relevant for the respondent to place on record the additional documents as the petitioner during her cross-examination on 19/10/2022 and 21/09/2023 had specifically denied questions regarding the WhatsApp chats and emails between the parties.

19. Learned counsel finally submitted that the respondent has mentioned about the communication via emails between the parties in his written statement. Therefore, it cannot be said that the petitioner would be taken by surprise, if the additional documents are brought on record.



20. Learned counsel for the respondent placed reliance on the judgment of Hon'ble Supreme Court in *Sugandhi (dead) by LRs and another vs. P. Rajkumar Rep. by his power agent Iman Oli, (2020) 10 SCC 706*.

Analysis and conclusion

21. Apart from hearing the arguments addressed on behalf of the parties, I have perused the material placed on record.

22. To begin with, it is relevant to note the provision of Order VIII Rule 1A of the First Schedule to the CPC, which reads as under:-

“1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.—(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

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

[(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced 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 documents—

- (a) produced for the cross-examination of the plaintiff's witnesses, or*
- (b) handed over to a witness merely to refresh his memory.”*

23. Order VIII Rule 1A CPC provides that as a matter of rule, a document i.e. not produced along with written statement, which is the basis of defence and was in possession and power of the defendant shall not be received on record without the leave of the Court. Accordingly, the documents that are in support of defendant's defence are to be filed with the written statement. The additional documents could be produced by the defendant only when despite due diligence, the defendant could not procure



any such documents being not within its knowledge and which came to be discovered subsequently. Therefore, while permitting an additional document to be placed on record, the Court is required to satisfy not only about the relevancy of the document but also about the reason for not having been filed the same at the appropriate stage. Needless to say, the aforesaid statutory provisions cannot be ignored or considered lightly at the whims and fancies of a party.

24. In the present case, it is not disputed that the written statement was filed by the respondent on 21.08.2019. The petitioner had already led her evidence, which was closed on 18.10.2023. The respondent before leading its evidence on 07.12.2023 had moved the present application for placing the additional documents on record.

25. Pertinently, the respondent had prayed to bring on record five documents i.e. emails and WhatsApp chats exchanged by and on behalf of the petitioner to the respondent with respect to the property in between June, 2016 till May, 2019, copy of the proceedings in another suit bearing CS DJ No. 386/2019 between the parties and copy of FIR No. 313/2023, which was registered by the petitioner. The petitioner before the learned Trial Court had given no objection for taking on record two documents i.e. proceedings in another suit pending between the parties and the copy of the FIR submitting that the same relate to subsequent event, however, it had opposed to taking on record the WhatsApp chats and email communications submitting that same were not produced on the record at the relevant time and were beyond the pleadings as the same do not find mention in the written statement. Nonetheless, learned Trial Court after



considering the pleas of the parties had permitted all the above documents to be taken on record, subject to cost.

26. In so far as the argument of the petitioner is concerned that the respondent was not diligent in placing the documents on record along with the written statement or atleast before framing of issues though the same were in knowledge or possession of the respondent, the respondent has assigned cogent reasons for not producing the documents along with his written statement.

27. In this regard, it may be pertinent to note the decision of the Apex Court in ***Civil Appeal no. 4096 of 2022 (SLP(C) No. 7452/2022)*** titled as ***Levaku Pedda Reddamma & Ors. vs. Gottumukkala Venkata Subbamma & Anr.*** wherein the Hon'ble Supreme Court while permitting to produce additional documents in terms of Order VIII rule 1 CPC, has observed as follows:-

“We find that the trial Court as well as the High Court have gravely erred in law in not permitting the defendants to produce documents, the relevance of which can be examined by the trial Court on the basis of the evidence to be led, but to deprive a party to the suit not to file documents even if there is some delay will lead to denial of justice. It is well settled that rules of procedure are hand-maid of justice and, therefore, even if there is some delay, the trial Court should have imposed some costs rather than to decline the production of the documents itself.”

28. In the light of the aforesaid and peculiar circumstances of this case, there is no infirmity in the impugned order passed by the learned Trial Court. The learned Trial Court has already granted the petitioner liberty to lead additional evidence regarding these documents and to amend the suit, should the petitioner wish to do so to this extent only. Therefore, the relevancy of these documents can be examined during the trial.



2024:DHC:5387



29. Consequently, no interference is required by this Court to alter or deny the findings recorded in the impugned order and the petition along with pending applications is, accordingly, dismissed.

SHALINDER KAUR, J.

JULY 22, 2024/ss