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

% ***Date of decision: 22nd October, 2024***

+ **CM(M) 3684/2024 & CM APPL. 62151-62152/2024**

SARIKA SHARMA

.....Petitioner

Through: **Mr. Manish Pratap Singh, Advocate.**

versus

ASHOK SHARMA

.....Respondent

Through: **Mr. Rahul Shukla with
Mr. Ramandeep Singh, Ms. Bachita
Baruah Shukla and Mr. Manish
Sharma, Advocates.**

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is defending a suit for partition.
2. Such suit for partition was filed by plaintiff Sh. Ashok Sharma against defendant Sh. Suresh Kumar Sharma.
3. During the pendency of the above said suit, Sh. Suresh Kumar Sharma died on 24.03.2022 and after his death, his legal representatives, including his two daughters Ms. Sarika Sharma and Ms. Shikha Sharma, have been brought on record,.
4. This Court has seen the impugned order dated 27.08.2024 whereby learned Trial Court noted that despite grant of final opportunity to the defendants to lead evidence, they had not cared to even file the affidavits and the cost had not been cleared either and,



therefore, their right to lead evidence has been closed.

5. Such order dated 27.08.2024 is under challenge.

6. Learned counsel for the plaintiff (respondent) also appears on advance notice and accepts notice.

7. Since it is a partition suit and according to learned counsel for the petitioner, only Ms. Sarika Sharma and Ms. Shikha Sharma would be filing their evidence affidavits and would be entering into witness box, in the interest of justice, the present petition is disposed of with the following directions:-

(i) The evidence affidavit of both the aforesaid DWs i.e. Ms. Sarika Sharma and Ms. Shikha Sharma be filed within ten days from today before the learned Trial Court. Copy thereto be also supplied to plaintiff/learned counsel for the plaintiff. If affidavit of any such witness has already been filed and copy thereto has also been supplied to the other side, then there would not be any further requirement of submitting any fresh affidavit by said witness.

(ii) Previous unpaid cost of Rs.2,000/- be paid by the petitioner to opposite side on the next date of hearing before learned Trial Court.

(iii) Admittedly, at one previous point of time, the petitioner herein was also burdened with a cost of Rs.10,000/- and for that, an application seeking waiver has, reportedly, been filed. However, without prejudice to his rights and contentions, learned counsel for the petitioner states that he would not press such application and would ensure that even such cost of



Rs.10,000/- is paid on the next date of hearing before the learned Trial Court.

(iv) For causing delay in the matter, the petitioner is further burdened with a cost of Rs.10,000/- and such additional cost of Rs.10,000/- shall also be cleared by the petitioner on the date fixed before learned Trial Court.

(v) The above said two witnesses i.e. Ms. Sarika Sharma and Ms. Shikha Sharma would not seek any unnecessary adjournment and would appear as per the date given/to be given in this regard by learned Trial Court.

8. The next date before learned Trial Court is stated to be 03.12.2024 and it will be up to learned Trial Court, subject to the position of its Board, to see whether it can examine the above said witnesses on said date itself or else it may fix up any other date for said purpose.

9. However, on such next date i.e. 03.12.2024, both the above said two witnesses would appear before learned Trial Court so that if permitted by learned Trial Court, they are examined on such date itself.

10. The petition stands disposed of in the aforesaid terms.

(MANOJ JAIN)
JUDGE

OCTOBER 22, 2024
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