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

+ **CM(M) 3906/2024**

SHADI RAM & ANR.

.....Petitioners

Through: Mr. O. P. Gupta, Adv.

versus

SHER SINGH & ORS.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

25.11.2024

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CM APPL. 68587/2024 (Exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

CM(M) 3906/2024

1. The petitioner impugns the order dated 06.09.2024 passed by the Trial Court in CS SCJ/426033/2016.
2. Petitioners are the plaintiffs in the civil suit for declaration pending before the Trial Court. Petitioners along with respondent number 9 to 11, filed a civil suit for declaration, permanent and mandatory injunction, which is presently pending before the Trial Court.
3. On 13.09.2022, the case was listed for the evidence of plaintiffs. On that date, cross-examination of PW-1 was concluded. The counsel for the plaintiffs closed the plaintiffs' evidence, and accordingly the case was



adjourned for defendant's evidence.

4. The petitioners later filed an application under section 151CPC for reopening of the plaintiffs' evidence, but the said application was dismissed vide impugned order dated 06.09.2024.

5. The learned counsel for the petitioners has submitted that the Trial Court dismissed their application without considering the material facts in as much as the evidence was closed on the statement of the proxy counsel, which was without any proper authority and without the knowledge of the petitioners and therefore the impugned order dismissing the application is illegal as the learned Trial Court did not use its inherent powers under Section 151CPC to ensure justice and prevent abuse of process.

6. It becomes evident on the perusal of the order dated 13.09. 2022 that evidence of the plaintiffs was closed by the proxy counsel in the presence of plaintiff who was cross examined as PW-1 on that day. The statement of the proxy counsel was also recorded by the court separately wherein he categorically stated that he was authorised to make the statement on behalf of the plaintiff to close plaintiffs' evidence. There is no reason why a counsel would make such a statement without being authorised. Moreover, such a statement was made by the counsel in the presence of the petitioner without any objection from him. It appears that no objection was raised even till 17.08.2023, when such an application was filed under section 151CPC upon engaging a new counsel. During the interregnum, even the defendants' evidence was led and closed on 13.07.2023. There is no reason why the petitioners remained silent for such a long period. Clearly it is a case of an afterthought which possibly was based on the advice given by the new counsel. The change of counsel does not confer a fresh ground to the



petitioners for reopening of evidence which was already closed vide order dated 13.09.2022 on the statement of the then counsel.

7. The order passed by the learned trial court is logical and based on settled principles of law. Court finds no ground to interfere with the impugned order. There is no merit in the petition, and the same is accordingly dismissed.

RAVINDER DUDEJA, J

NOVEMBER 25, 2024

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