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

+ CM(M) 1462/2018 & CM APPL. 50218/2018--stay  
BHATERI DEVI (DECEASED) THR LR ..... Petitioner  
Through: Mr.V.P.Rana, Adv.  
versus

ATTAR SINGH (DECEASED) THR LRS ..... Respondent  
Through: Mr.Amit Saxena, Adv.

**CORAM:**

**HON'BLE MS. JUSTICE SHALINDER KAUR**

**ORDER**

% **06.03.2024**

1. The present petition under Article 227 of the Constitution of India has been filed impugning the order dated 19.11.2018 passed by the learned Additional District Judge (hereinafter referred to as “Trial Court”), Rohini Courts in CS No. 59562/2016 whereby application seeking recalling of the order dated 14.11.2018 was dismissed and consequently, permission to lead plaintiff’s evidence was declined.

2. It is submitted that petitioner filed a suit for specific performance and permanent injunction. On 21.08.2018, right of the legal representative (LR of the petitioner) to lead plaintiff evidence was closed. In November 2018, plaintiff filed an application under Order XVIII Rule 17 Civil Procedure Code, 1908 (hereinafter referred to as ‘CPC’) for recalling of the order dated 21.08.2018 which was dismissed vide order dated 14.11.2018 and further the learned Trial Court put up the matter for defendant’s evidence on 19.11.2018. Subsequently, on 19.11.2018 vide impugned order, the learned Trial Court dismissed the petitioner’s application under Section 151 CPC seeking recalling of order dated 14.11.2018 and closed the defendant’s evidence.



3. Learned counsel submits that the plaintiff's evidence was to be recorded before the learned Local Commissioner on four dates of hearings being 01.08.2018, 06.08.2018, 07.08.2018 and 20.08.2018. Whereas, on two dates of hearing i.e., 06.08.2018 and 07.08.2018, the parties were making efforts to compromise the dispute and hence, the evidence could not be recorded. Moreover, the learned Trial Court did not consider the said important fact and passed the impugned order dismissing the application of the petitioner under Order XVIII Rule 17 CPC further, closing the right of the petitioner to lead plaintiff evidence.

4. It is submitted that in these circumstances, the impugned order be set aside and the petitioner be granted permission to lead plaintiff evidence.

5. The submissions are controverted on behalf of the respondent on the ground that the conduct of the petitioner has in no manner been so that he should be afforded the opportunity to re-open his evidence as, he had been granted various opportunities by the learned Trial Court which were never availed by the petitioner herein and the learned Trial Court had rightly closed the right of the petitioner to lead plaintiff evidence. Moreover, the petitioner had moved two applications seeking permission before the learned Trial Court to lead plaintiff evidence which had been categorically denied by the learned Trial Court, therefore, the present petition is not maintainable.

6. In rebuttal, the learned counsel for the petitioner submits that the respondent herein has *mala fide* lured the petitioner to enter into the compromise talks and same submissions were made before the Local Commissioner as well however, before the learned Trial Court, he took the stand that the petitioner is intentionally not getting the evidence recorded.

7. It is submitted that the petitioner was sincerely making efforts for



getting the matter compromised which can also be seen from the impugned order as the parties were still granted an opportunity to compromise the disputes in the said order, and even before this Court, the same attempts were made.

8. It is submitted on behalf of the petitioner that in view of the entire background, the petitioner be afforded an opportunity to lead evidence.

9. It is relevant to note that on 01.08.2018, when the matter was listed for the first time before the Local Commissioner neither the witnesses of the plaintiff were present nor were they summoned and proxy counsel appearing on behalf of the petitioner had requested for 10 days for leading evidence submitting that the case record is bulky.

10. The Local Commissioner further records that PW1 Smt. Shanti Devi and PW2 Sh. Satbir Singh had already tendered their affidavits on 30.01.2018 and the case was listed for cross-examination however, both the witnesses were present. Accordingly, the Local Commissioner had fixed two consecutive dates i.e., 06.08.2018 and 07.08.2018 for recording the evidence of the witnesses and dates were given as per the conveniences of the parties.

11. On 06.08.2018 when the matter was listed for cross-examination before the learned Trial Court, one Sh. Hari Om informed telephonically to the Local Commissioner that the matter was also fixed for cross-examination on 07.08.2018 and the cross-examination may be conducted on the said date of hearing. However, none had appeared on behalf of the parties on the said date of hearing before the Local Commissioner. On 07.08.2018, PW2 Sh. Satbir Singh had appeared before the Local Commissioner and at that stage, counsels appearing for the parties informed the court that they already had a short meeting in the beginning of the



proceedings and that they were interested in exploring the possibilities of settlement, if any. The Local Commissioner accordingly adjourned the matter to 20.08.2018 at 2PM for settlement, if any, otherwise for conducting the cross-examination.

12. On 20.08.2018, learned counsels for the petitioner and the respondent had informed that the matter was not compromised, however, the parties were still exploring the possibilities of settlement, accordingly, they will inform the learned Trial Court about the same on the date which is already fixed i.e., 21.08.2018. However on 21.08.2018 before the learned Trial Court, Ms.Radha Singh, Advocate had submitted that the plaintiff has not recorded the evidence before the Local Commissioner and the learned Trial Court after taking note of the reports of the Local Commissioner had observed that despite the order of appointment of learned Local Commissioner *vide* order dated 26.07.2018, the plaintiff seems not to be interested in leading evidence and hence, his right to lead plaintiff evidence was closed.

13. It is not disputed that on the said date of hearing also, the counsels for the parties submitted before the learned Trial Court that the matter has almost been compromised and accordingly they sought sometime to finalise the terms of the compromise. Consequently, the matter was passed-over at 3PM and thereafter, the parties informed the Court that there were no chances of compromise. Hence the matter was listed for defendant evidence on 18.09.2018.

14. The learned counsel for the respondent vociferously makes submissions at this stage that the conduct of the petitioner had been such since beginning and that he does not intend to get the evidence recorded.



Even the first Local Commissioner who was appointed by the learned Trial Court, could not get the evidence recorded, therefore, his right to lead evidence was closed after noting the entire conduct of the petitioner.

15. Needless to say, there is no whisper about the appointment of first Local Commissioner before the learned Trial Court and the conduct of the petitioner before the second Local Commissioner has been highlighted.

16. In view and in totality of the facts and having considered the above submissions, the petitioner is granted two opportunity in all to conclude its entire evidence.

17. Learned counsel submits that two witnesses of the plaintiff are to be cross-examined and one official witness is to be summoned. The next date of hearing before the learned Trial Court is 28.03.2024.

18. The learned Trial Court shall make an endeavour that the cross-examination of two witnesses i.e., PW1 Smt. Shanti Devi & PW2 Sh. Satbir Singh may be concluded on 28.03.2024 and in case, the same is not concluded, the learned Trial Court as per its convenience shall give another date within a week from 28.03.2024 as it is stated that the matter is 10 years old for concluding the cross-examination and for recording evidence of official witness. The official witness shall accordingly be summoned by petitioners on moving appropriate application before the learned Trial Court.

19. The petitioner is burdened with costs of Rs.25,000/- to be paid to the respondent on the next date of hearing before the learned Trial Court.

20. With these observations, the petition stands disposed of.

**SHALINDER KAUR, J.**

**MARCH 6, 2024/neelam/dp**