



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

% Judgment reserved on: 18.03.2025
Judgment delivered on: 25.03.2025

+ CM(M) 3/2019 & CM APPL. 94/2019 & CM APPL. 5944-5945/2019 & CM APPL. 38302-38303/2022

REHMAN AFTAB ALAM

.....Petitioner

versus

SALMA BANO & ORS

.....Respondent

Memo of Appearance

For the Petitioner: Mr. Tushar Singh with Mr. Siddharth Dhoot,
Advocates along with petitioner.

For the Respondent: Ms. Zehra Khan, DHCLSC along with respondent
in person.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. Petitioner Mr. Rehman Aftab Alam has filed a suit against his wife (since divorced) seeking recovery of Rs. 6,66,500/-.
2. The case is stated to be at the stage of final arguments.
3. During the pendency of the above said suit, plaintiff (petitioner herein) moved an application under Order XVIII Rule 17 read with Section 151 CPC seeking permission to further cross-examine DW-1 Smt. Salma Bano.
4. As per above application, his assertion was that the case was earlier fixed for cross-examination of defendant on 23.01.2018, and that he wanted to cross-examine her on some relevant aspects but the learned Court did not



allow him to put various relevant questions and discharged the witness, in a hurry. He contended that due to incomplete cross-examination, if the permission is not granted, he would suffer immensely as the eventual decision might be, therefore, also against him. It is also submitted that petitioner has now engaged a counsel and would conduct further cross-examination through his such counsel.

5. All such contentions have been refuted by Ms. Khan, learned DHCLSC counsel for respondent. She submits that the petitioner is merely interested in delaying the disposal of his own suit and his above said request was totally misconceived. She also contends that the petitioner is rather in a bad habit of maligning every Judicial Officer and did not even spare the Successor Court. It is also submitted that petitioner himself had requested learned Trial Court to permit him to cross-examine DW-1 and on the basis of such request only, the Court had permitted him and the entire cross-examination was conducted smoothly and there was never any interference or abrupt closure, as claimed by the petitioner.

6. Trial Court record has been received and this Court has gone through the same.

7. Let me, straightway, come to the application which the petitioner had moved on 23.01.2018.

8. On that day, it seems quite obvious that petitioner had, himself, come armed with a typed-application wherein he mentioned that his counsel was busy in other Court and was unable to appear and, therefore, he (plaintiff) may be allowed to cross-examine the defendant's witnesses, to save the



precious time of Court. It may also be mentioned that though the year was typed but the date and month had been filled up in hand in such application.

9. The order dated 23.01.2018 also needs to be seen. It reads as under: -

“Pr: Plaintiff in person.

*DW-1 Salma Bano with Mr. D P Katyan, Adv for all defendants.
Plaintiff has moved an application seeking permission to cross examine the defendants. Heard. Allowed.*

DW-1 Salma Bano further cross examined and discharged.

Put up on 30.01.2018 for R D E.

Sd/-
(G N PANDEY)
ADJ/MACT(PILOT COURT)/23.01.2018”

At 11:45 A M

At this stage Mr. Rajkumar Bhartiya, Adv. On behalf of plaintiff has appeared and submits that he is no more as counsel for the plaintiff as he has returned the file as he was appointed as counsel for plaintiff through DLSA.

In view of the above submissions, Mr. Rajkumar Bhartiya, Adv. has discharged from the present case.

Put up on 30.01.2018 as the date and purpose already fixed.

Sd/-
(G N PANDEY)
ADJ/MACT(PILOT COURT)/23.01.2018”

10. Thus, it is very clear that well before 11:45 A.M., the cross-examination was over.

11. Such order sheet does not reflect anywhere that the learned Trial Court had forced the plaintiff to conduct the cross-examination. This



becomes important to mention as the case of the petitioner is also to the effect that he had been forced by the court to conduct cross-examination. He had made a complaint against the learned officer, in which he had alleged that when he told the court that his counsel was not available, learned judicial officer angrily shouted upon him and threatened to impose cost and, therefore, he himself conducted the cross. Fact remains, in any such situation, he could have conducted cross-examination, without moving any application. It really looks surprising that after such alleged scolding, he would leave the Court and then come back with a typed application.

12. Quite apparently, he, himself, had come prepared to cross-examine the witness and, therefore, was, well-in-advance, armed with the abovesaid typed application and, therefore, his assertion that he was forced to cross-examine the witness is totally fallacious and misrepresentative.

13. Moreover, in his said application dated 23.01.2018, he merely contended that his counsel was busy in some other Court and he wanted to conduct the cross-examination all by himself, in order to save the time of the Court but the subsequent part of the above said order would indicate that the counsel for plaintiff appeared before the Court and rather divulged, that he was no longer representing the plaintiff.

14. The plaintiff, then, prayed for transfer of his case and moved an application under Section 24 read with Section 151 of CPC before the concerned Court of learned District and Sessions Judge same day and in such application, he reiterated his same version that he was forced and not permitted to put several relevant questions.



15. However, since the learned Trial Court had fixed up the matter for further evidence on a very short date i.e. 30.01.2018, the moment, the plaintiff submitted before the learned Trial Court that he had already made a request for transfer of the case, the learned Trial Court, itself, sent the file to learned District and Sessions Judge, North East District for appropriate orders.

16. On receiving such file, the learned District and Sessions Judge, without making any observation with respect to the averments appearing in the transfer application, directed the case to be withdrawn from his Court and assigned it to another Court.

17. In such a situation, mere fact that a transfer application had been filed by the petitioner would not, in itself, anything substantial, much less that cross-examination was scuttled and scampered.

18. Moreover, if at all, as alleged, the learned Trial Court was having some bias against him and was leaning towards his adversary, it would not have itself sent the file to learned Principal District and Sessions Judge.

19. It also needs to be highlighted that even prior to 23.01.2018, the petitioner had made complaints against the said learned officer by sending copy of such complaint to several Authorities. If at all, he was expecting that he would not get any justice from said Court, he should have rather filed application under Section 24 read with Section 151 of CPC prior to 23.01.2018.

20. Moreover, it also seems quite obvious that the petitioner is in habit of



maligning the Court as he made further allegations against the Transferee Court and made another application under Section 24 read with Section 151 of CPC. Unfortunately, the above said request was also allowed and the case was transferred to some other Court, without giving any specific reason by learned District and Sessions Judge. The transfer of case from one court to another, particularly, when there is averment of bias should not be allowed in a cursory manner, as it has potential of suggesting that such averments are correct and can, thus, cause adverse reflection upon the concerned court. In *Ram Prabhakar Versus Philips Paints Pvt. Ltd. and Others: 2024 SCC OnLine Del 7480*, this Court has observed that transfer of case from one Court to another should not be permitted, merely, on the asking by citing some fanciful assumptions and that unless and until, any such applicant demonstrates genuine and compelling reason, the transfer should not be allowed.

21. Be that as it may, it becomes clear that the plaintiff, himself, had moved an application and sought permission to cross-examine DW-1 Smt. Salma Bano and based on his such application, the Court permitted him to cross-examine the witness. There is nothing which may indicate that he had been prevented from putting any relevant question or that his right to cross-examine the witness was abruptly closed or curtailed.

22. The dismissal of his application under Order XVIII Rule 17 CPC is also for the same reason.

23. This Court has gone through order dated 06.09.2018 and the learned Trial Court has dealt with all the material aspects very appropriately and



even observed that the petitioner was having no regard or respect to the judicial proceedings and was not even afraid of levelling false allegations against the judicial officers, for his personal gain. It also recorded that the petitioner had not even disclosed about those material facts or material questions which she had failed to put to the above said witness during the cross-examination.

24. It is, thus, quite obvious that there is no perversity of any kind whatsoever in the above said order dated 06.09.2018 whereby the learned Trial Court has exercised its discretionary power under Order XVIII Rule 17 CPC and has dismissed the said application. Keeping in mind the overall facts of the case and in view of my foregoing discussion, I do not find any reason, much less a compelling one, to exercise my supervisory power under Article 227 of Constitution of India, particularly when the order does not contain any illegality or perversity.

25. The petition is accordingly, dismissed.

26. Since the case is already at the stage of final arguments, learned Trial Court is requested to dispose of the case in accordance with law, after giving due opportunity of hearing to both the sides.

27. All pending applications stand disposed of in aforesaid terms.

MANOJ JAIN, J

MARCH 25, 2025/sw