

(2007) 11 DEL CK 0039
In the Delhi High Court
Case No : CM (M) No. 1650 of 2005

Arvind Gulati

APPELLANT

Vs

Sapna Gulati

RESPONDENT

Date of Decision : 02-11-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227

Citation : (2007) 11 DEL CK 0039

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : Hitender Kapur, for the Appellant; Abhishek Atrey, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Bhasin, J.—The petitioner and respondent are husband and wife. Their relations have been strained. They have been fighting against each other in respect of the ownership of some immovable properties in Krishna Nagar, Delhi. The respondent apprehending her forcible dispossession from the suit property filed a suit for permanent injunction against the petitioner herein in the Court of Senior Civil Judge, Delhi and the same was assigned to the Court of a Civil Judge. The petitioner-defendant filed a written statement dated 5-3-03 through his advocates Shri Shalabh Singhal and Shri Anil Saxena. It appears that in that written statement the petitioner-defendant admitted the claim of the respondent-plaintiff. Subsequently an application u/s 151 CPC was filed on behalf of the petitioner-defendant by another counsel Shri Hitender Kapur, who is representing him in the present petition also, on 30th September, 2004 seeking permission of the Court to file a fresh written statement on the ground that the earlier one had been filed by his advocates but since he could not read or write English he had signed that written statement without knowing its contents by believing his above named advocates. It was also alleged in the application that these two advocates had obtained his signatures on the pretext that since there had been a

settlement between him and his wife, the respondent herein, some application was required to be filed in the matrimonial Court where a petition for restitution of conjugal rights was pending.

Believing this statement of the counsel he had signed the written statement without knowing its contents. It was further claimed in the application that the written statement had been wrongly filed by the advocates in collusion with the respondent-plaintiff and that was evident from the fact that both husband and wife were having various litigations against each other and so there was no occasion for the petitioner-defendant to admit the claim of the respondent-plaintiff in the suit and also from the fact that in the maintenance application which the respondent-plaintiff had filed in the matrimonial Court she had claimed that she had no immovable property and in these circumstances the petitioner-defendant had prayed to the trial Court to permit him to file a fresh written statement.

2. The learned Civil Judge, however, dismissed the application of the petitioner-defendant vide order dated 15th July, 2005. While taking note of all the afore said facts which had been averred by the petitioner-defendant in his application u/s 151 CPC the trial Judge observed that the written statement of the defendant was supported by his affidavit and was signed by him and if the allegations made by the defendant regarding the role played by his advocates had been correct then he would not have remained silent for a year and further that if he had any grievance against his advocates he could have filed complaints against them but he had not done that. It was also observed by the learned trial Judge that from the documents available on record it was clear that the defendant (petitioner herein) was a highly educated person and so could very well understand the contents of his written statement even though he may not read and write English. It was further observed that there was, in any case, no provision in the CPC for substitution of one written statement by another and the only provision of law which could be invoked was by way of amendment application. Feeling aggrieved by this order the petitioner-defendant has filed the present petition under Article 227 of the Constitution of India.

3. Although the respondent after being served with the notice of this petition had entered appearance through an advocate but on the date when this petition was taken up for hearing her counsel pleaded no instructions in the matter and accordingly arguments of counsel for the petitioner only were heard.

4. Learned Counsel for the petitioner reiterated before this Court the afore said facts which had necessitated filing of the application u/s 151 CPC which came to be dismissed by the learned trial Court by the impugned order and submitted that the impugned order should be set aside to undo the harm caused to the petitioner-defendant by his advocates in conspiracy with his wife.

5. In my view there is no infirmity in the view taken by the learned trial Court to the effect that there is no provision in the CPC for substituting the pleadings in

the manner sought for by the petitioner-defendant and that the only remedy available in the circumstances in which the application u/s 151 CPC was moved was to seek amendment in the original written statement to explain the circumstances under which any admission of act was introduced in that written statement and to plead correct facts. This petition is, Therefore, dismissed. Parties to bear their own costs.