

(2022) 08 DEL CK 0079

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 566 Of 2022, Civil Miscellaneous Application No. 27433 Of 2022

Hardev Dohil Since Deceased Though His Lrs & Anr

APPELLANT

Vs

Punjab National Bank

RESPONDENT

Date of Decision : 16-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 227
Code Of Civil Procedure, 1908 — Order 12 Rule 6
Transfer of Property Act, 1882 — Section 106

Citation : (2022) 08 DEL CK 0079

Hon'ble Judges : C.Hari Shankar, J

Bench : Single Bench

Advocate : Rajesh Manchanda, Rajat Manchanda, Vaibhav Mishra, Gagan Mathur, Madhu Sehgal, Varun Kumar, Shitanshu

Final Decision : Allowed

Judgement

C.Hari Shankar, J

1. This petition under Article 227 of the Constitution of India assails order dated 25th February 2020, passed by the learned Additional District Judge (the learned ADJ) in CS 10451/16, to the extent the said order disallows the request of learned Counsel for the petitioner (as the plaintiff in the said suit) for permission to confront the respondent's witness DW-1 S.K. Goyal with certain photographs and the negatives thereof.

2. CS 10451/16 was instituted by Hardev Dohil and his son Dr. Ranjan Dohil against the respondent bank ("the Bank"), before this Court, prior to enhancement of the pecuniary jurisdiction of the District Courts, as CS(OS) 1337/2007. Subsequently, following enhancement of the pecuniary jurisdiction of the Trial Courts, the suit was transferred to the learned ADJ and stands re-numbered as CS 10451/16.

3. During the pendency of the suit, Hardev Dohil, who was the first plaintiff in the suit, has expired. He is represented, in the present proceedings, by his legal representatives Ms. Upasana Dohil and Ms. Angela Dohil (as Petitioner 1(i) and 1(ii) respectively).

4. The petitioners, who claim to be owners of a property admeasuring 650 sq. ft. situated on the ground floor of Dohil Chambers, 46, Nehru Place, New Delhi, claimed that the Bank was a tenant in respect of the said premises. The plaint asserted that the tenancy stood terminated vide legal notice dated 7th November 2006 issued under Section 106 of the Transfer of Property Act, 1882. The suit was initially instituted for recovering possession of the suit property and for mesne profits. However, during the pendency of the suit, consequent on the allowing of an application filed by the petitioner under Order XII Rule 6 of the CPC, possession of the suit property was recovered by the petitioner. The only issue that remains for adjudication was, therefore, the claim for mesne profits. Accordingly, the petitioner amended his suit to restrict the decree sought in the suit for a sum of ? 63,95,641/- on account of arrears of rent, damages, mesne profits and repairing charges.

5. The suit is at the stage of evidence. The petitioners, as plaintiffs, led the evidence of three witnesses. Their evidence stands closed.

6. The present dispute relates to the evidence of DW-1 S.K. Goyal, who, according to Mr. Manchanda, learned Counsel for the petitioners, was Chief Manager of the Bank at the time when the lease deed dated 14th July 1999 was executed.

7. Mr. Manchanda submits that one of the contentions advanced by the Bank, in response to the suit, was that there was a public passage which, as it was in use by members of the public, could not be included while computing the damages or mesne profits payable to the petitioner. He submits that, per contra, the contention of his client is that the pubic passage was being actually used by the respondent bank and that the respondent bank had, in fact, constructed a guard room and a store room in the passage. On this aspect, the relevant portion of the cross examination of DW-1, which took place on 25th February 2020 may be reproduced thus:

"Question 2 : Whether there was a guard room of the bank in the covered verandah at point AC to EF.

Answer : There was no guard room at the time of my joining in the said branch and during my tenure.

Question 3 : Do you know at what time the guard room was there and the same was removed ?

Answer: I have already replied in question No.2.

It is incorrect to suggest that I am deliberately concealing the existence of guard

room on the ground floor at point AC to EF and the same was removed by DDA as the bank had illegally and unauthorized constructed the same.

It is incorrect to suggest that the remaining covered verandah excluding the guard room was being used as parking for the official of bank and its customer exclusively or that bank also put flowers pots in the said portion. (Vol. The Parking was not allowed in that area).

It is correct that the verandah at the first floor was also having ceiling upon the said verandah like the ground floor has the ceiling on the verandah. It is incorrect to suggest that the bank has covered the verandah of first floor to use the said space as the store room of the bank and kept files and other documents of the bank. (objected to by the counsel for the defendant).

At this stage, Ld. Counsel for the plaintiff wishes to confront with certain photographs and negatives of these photographs which were clicked during the tenancy period. Ld. Counsel for the defendant objects on the ground that the plaintiff has no right to confront the witness with the photographs without seeking leave of the Court, during cross examination. The legal principle stated by the Ld.Counsel for the plaintiff is accepted. However, the photographs, in the absence of any particular date on which they were taken, cannot be permitted to be confronted to the witness."

(Emphasis supplied)

8. The petitioner is principally aggrieved by the italicised portion of the recording of the cross examination of Mr. S.K. Goyal, wherein the learned ADJ has rejected the petitioner's request for permission to confront DW-1 with certain photographs which, accordingly to Mr Manchanda, would have fortified his clients' submission that the passageway in question was in fact not a public passage but was in use by the Bank.

9. As is apparent from a reading of the afore-extracted portion of the recording of cross examination of DW-1 S.K. Goyal, it is clear that the learned ADJ has rejected the request for confronting DW-1 with the photographs in question only on the ground that the date on which the photographs were taken was not forthcoming.

10. Learned Counsel for the respondent, to a query from the Court, fairly acknowledges that the mere absence of the date, on which they were taken, not being forthcoming on the photographs, may not suffice as a ground to reject the request of the petitioner to be permitted to confront DW-1 with the said photographs. However, he submits that there were other reasons why the witness could not be permitted to be confronted with the said photographs.

11. The present petition takes exception only to the order dated 25th February 2020, and it is clear that the only ground on which the learned ADJ deemed it appropriate not to permit DW-1 to be confronted with the photographs was the fact that the photographs did not indicate the date on which they were taken.

12. There is no principle known to the law which permits a Court to reject a request for putting a particular document to a witness on such a ground. Needless to say, the response that the witness may tender, if the photographs were put to him, may be of use to the petitioner; or it may not. If the respondent is of the opinion that the photographs were inadmissible in evidence or that the response given by the witness to the query put to him in that regard is of no consequence to the case that the petitioner seeks to set up, that would be a matter for the respondent to urge and argue when the matter is heard on merits by the learned Trial Court.

13. This Court is exercising jurisdiction under Article 227 of the Constitution of India. The court is ordinarily not expected to enter into the correctness or otherwise of the order passed by the Court below while exercising such jurisdiction, as is apparent from the following passage from *Sadhana Lodh v. National Insurance Co. Ltd.* (2003) 3 SSC 524:

“7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.”

14. However, if the court below proceeds on a principle foreign to the law, it necessarily requires correction and interference.

15. Inasmuch as the only ground on which the learned ADJ has refused the petitioner's request to confront DW-1 with the photographs in question was that the date on which they were taken was not forthcoming and the said ground, in my opinion, could not constitute a valid basis for refusing the request of the petitioner, the impugned order cannot sustain.

16. The impugned order to the extent it refuses the petitioner's request to confront DW-1 with photographs on the ground that the date on which they were taken was not forthcoming, is quashed and set aside.

17. The petition stands allowed to the aforesaid extent with no orders as to costs. Pending applications, if any, stand disposed of accordingly.