

(2018) 08 DEL CK 0502
In the Delhi High Court
Case No : Civil Suit (Os) 184 Of 2008

Shri Keshav Goel & Anr

APPELLANT

Vs

Smt. Suchinta Sahni & Ors

RESPONDENT

Date of Decision : 27-08-2018

Acts Referred:

Citation : (2018) 08 DEL CK 0502

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Dinesh Garg, Rachna Agrawal, Ravi Kapoor, Gauri Puri, Dhananjay Baijal, Nikhil Nayyar

Judgement

Prathiba M. Singh, J. (Oral)

I.A. 5611/2018 (delay)

1.Â Delay in filing the OA is condoned.Â I.A. is disposed of.

O.A. 45/2018

2. The chronology of events in this case highlights the malaise of repeated adjournments in recordal of oral evidence, especially in case of outstation &

old witnesses who have to make travel arrangements and repeatedly appear before the Court for their cross examination.Â Â

3. The present appeal has been filed challenging the order dated 12th February, 2018, by which the Joint Registrar has closed the evidence on behalf

of the Defendants.Â In the appeal the prayer is for permission to recall the order of the Joint Registrar and permit the cross examination to be completed.

4. The brief background of the present case is that the Plaintiffs had entered into an agreement to sell with the Defendant No.2's father, Mr. J.

N. Sahni on 4th February, 2007, read with supplementary agreement dated 12th April, 2007. As per the said agreement, the total sale consideration for the suit property bearing No.59, Ring Road, Lajpat Nagar-III, New Delhi admeasuring 790 square yards was Rs.17,00,00,000/-. According to the learned counsel for the Plaintiffs a sum of Rs.4 Crore has been paid as part sale consideration.Â The present suit for specific performance has been filed seeking specific performance of the said agreement.Â Â

5. The Plaintiffs have already led evidence in the suit. Defendant No.1 had made a statement on 15th February, 2016 that she did not wish to lead evidence.Â Accordingly, Defendant No.2 â?" Shri Ajay Sahni, was directed to lead evidence, subject to costs, with the clear condition that he would not get more than two opportunities to lead evidence and that if Defendant No.2 did not lead evidence on two occasions, the evidence of Defendant No.2 would be deemed to be closed.Â Order dated 15th February, 2016 is extracted herein below:

â??1. Counsel for defendant no. 1 states that defendant no. 1 does not want to lead evidence. With consent of the parties, the order of the Joint Registrar dated 18.11.2015 is recalled qua defendant no.2 subject to three conditions. First condition is that defendant no.2 will pay a sum of Rs.25,000/- as costs to the counsel for the plaintiffs before the next date of hearing. Thesecond condition is that defendant no.2 will not getmore than two opportunities to lead evidence and if thedefendant no.2 does not lead evidence in twoopportunities, the evidence of the defendant no.2 willbe deemed to be closed. The third condition is that defendant no.2 will positively file affidavits by way of evidence of his witnesses, who have not to be summoned, within a period of four weeks from today, failing which right to file affidavits by way of evidence will be deemed to be closed.

â?|â?|â?|â?|â?|â?|..â??

6. On 29th April, 2016, the costs were paid.Â Defendant No.2 had filed the list of witnesses and affidavits of evidence on 14th March, 2016.Â

Copies of the same were supplied and the matter was listed on 16th and 19th August, 2018 for the Defendantsâ?? evidence.Â However, on 16th

August, 2016, Defendant No.2 did not appear before the Court on the ground of illness.Â Thereafter i.e., from 29th September, 2016, Defendant

No.2 had appeared on all occasions except on 12th February, 2018.Â On two

occasions, the cross examination was recorded. The order dated 15th February, 2016 is categorical that only two opportunities would be given to Defendant No.2 to lead evidence.Â Clearly, Defendant No.2 was present before the Court on 29th September, 2016, 1st December, 2016, 27th January, 2017, 13th April, 2017, 25th July, 2017 and 10th October, 2017.Â Out of these occasions, the Defendant No.2 was cross examined on only two occasions. It is seen from the record that adjournments have been taken only because of inconvenience of either of the counsels in this matter. The defendant no.2 finally did not appear on 12th February 2018 due to ill-health and his evidence was then closed by the Joint Registrar on 12th February 2018. The appeal against this order was filed on 2nd April 2018 and was taken up for hearing today after issuance of notice.Â

7. The Court is today informed that defendant no.2 has unfortunately passed away on 7th August, 2018.Â It is noticed from the record that Defendant No.2 had been sometimes travelling from Dubai to appear before the Court but due to various inconveniences on behalf of the counselsÂ Â Â Â Â Â Â Â of either side, including his own counsel, the matter is being adjourned from time to time. This state of affairs could have been completely avoided if endless cross examination is not permitted and when outstation witnesses or old witnesses appear, it is made clear that no adjournments shall be granted and evidence is recorded on a day to day basis. A perusal of the oral evidence recorded shows that a substantial part of the cross examination of Defendant no.2, running into a total of 16 pages has already been recorded.

8. Under these circumstances, it is directed that whatever evidence has been recorded of Defendant No.2 shall be read in evidence, at the final hearing of the suit.Â No further evidence is permitted in the matter.Â Â

9. Upon the Plaintiffs taking steps for impleadment of the LR's, the counsel for Defendant No.2 shall file his vakalatnama, duly executed by the LR's.Â The matter shall be heard finally on the next date.Â No further opportunity for evidence is given to either of the parties.Â Â 10. OA is disposed of with these observations.Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â

Further directions:

11.Â It is directed that as per the Delhi High Court (Original Side) Rules, 2018 whenever an outstation witness appears before the Joint Registrar or

Local Commissioner, evidence has to be recorded on a day to day basis and no adjournment ought to be granted. The relevant rule is extracted below:

Chapter XI, Rule 13 of the Delhi High Court (Original Side) Rules, 2018:

13. Evidence of outstation witnesses.-Recording of evidence of outstation witness(es), shall be on day-today basis, till the witness(es) is discharged.

12. The above Rule shall be strictly adhered to. A copy of this order be sent to the Registrar General for being circulated to all the Joint Registrars

recording evidence on the Original side of this Court.

13. Learned Counsel for Defendant No.3 informs the Court that Defendant No.2 has passed away on 7th August, 2018. He is survived by his wife

and two children. The names of the LRs of Defendant No.2 shall be provided to learned counsel for the Plaintiffs within two weeks from today.

Plaintiffs to implead the LRs within two weeks thereafter by filing an amended memo of parties. Vakalatnama be also filed by Ld. Counsel for

defendant no.2 within two weeks.

14. List on 12th October, 2018 for final hearing.