

**(2019) 05 DEL CK 0099**

**In the Delhi High Court**

**Case No :** Civil Miscellaneous (Main) No. 837 Of 2019, Civil Miscellaneous Application No. 25404 Of 201

Suresh Kumar

APPELLANT

Vs

Shardha Ahuja

RESPONDENT

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**Date of Decision :** 27-05-2019

**Acts Referred:**

Constitution Of India, 1950 — Article 227

**Citation :** (2019) 05 DEL CK 0099

**Hon'ble Judges :** Prateek Jalan, J

**Bench :** Single Bench

**Advocate :** Radhika Arora

**Final Decision :** Disposed Off

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## **Judgement**

Prateek Jalan, J

1. The challenge in this petition, under Article 227 of the Constitution, is to an order dated 13.05.2019 by which the application of the petitioner herein to advance oral arguments has been rejected.

2. The petitioner herein is the respondent in the eviction proceedings before the Trial Court. By an order dated 10.04.2019, keeping in mind the convenience of counsel on both sides, the Trial Court fixed the case for respondent's evidence on 15.04.2019 at 11:30 am. The Court recorded that the present matter was one of the oldest matters pending in the Court and that it was inclined to dispose of it, as early as possible. The order recorded that a last opportunity was given and the evidence would be closed if the respondent did not lead the evidence on that date.

3. When the matter was taken up on 15.04.2019, the respondent's evidence was concluded, and it was initially directed that the matter would be kept for final arguments on 29.04.2019. However, at the request of learned counsel for the petitioner herein, the matter was taken up again and the date of 29.04.2019 was

changed to 07.05.2019, at his request. It was once again recorded that the matter was listed for arguments, giving last and final opportunity to both the parties and that in the absence of arguments being advanced on that date, the matter would be fixed for orders. The orders of the Trial Court dated 15.04.2019 is reproduced below:-

"15.04.2019

Present: Sh.Praveen Suri, Ld. Counsel for the petitioner along with Sh. Baldev Ahuja

Sh. Manu Nayyar and Sh. Amit Kumar, Ld.

Counsel for respondent.

Perused the file.

RW-3 Sh. Ghanshyam Goyal and RW-4 Sh. Deepak Jain have been examined, cross examined and discharged. Ld. Counsel for respondent closed respondent's evidence.

Now to come up for final arguments on 29.04.2019. Last and final opportunity is given to both the parties. It is made clear to both the parties that in case the arguments are not advanced on the next date of hearing, the matter shall be fixed for orders.

(Ajay Nagar)

Addl. Rent Controller (W)

THC/Delhi. 15.04.2019.

At 1:15 p.m.

File is taken up again at the request of Ld. Counsel for the respondent as he wants to get the next date of hearing changed. Ld. Opposite counsel has also been called.

Present: Sh.Praveen Suri, Ld. Counsel for the petitioner along with Sh. Baldev Ahuja

Sh. Manu Nayyar and Sh. Amit Kumar, Ld.

Counsel for respondent.

Perused the file.

Heard. Ld. Counsel for the respondent submits that he is not available from 20.04.2019 to 05.05.2019 as he has to leave for his native place Mujaffar Pur for family function. Rail Tickets have also been shown to the Ld. Opposite counsel and he is satisfied about the bonafide of the Ld. Counsel for respondent.

Heard. Perused.

In view of submissions and circumstances, the date is changed to 07.05.2019 at the request of Ld. Counsel for the respondent.

Now to come up for final arguments on 07.05.2019 . Date is given as per convenience of Ld. Counsel for the respondent.

Since the present matter is one of the oldest matters pending in this court, this court is inclined to dispose it of as early as possible. As such, last and final opportunity is given to both the parties. It is made clear to both the parties that in case the arguments are not advanced on the next date of hearing, the matter shall be fixed for orders. Earlier given date i.e. 29.04.2019 stands cancelled."

4. On the next date of hearing, i.e. 07.05.2019, the respondent moved a further application for adjournment on the ground that a transfer appeal in respect of the same proceedings had been filed before the learned District and Sessions Judge - West. The Trial Court did not allow the application of the petitioner herein for adjournment to advance arguments, and fixed the matter for judgment/ order/ clarification on 14.05.2019. The request on behalf of the respondent herein [petitioner in the Trial Court] for a Passover was granted twice, but rejected on the third call. However, both parties were given liberty to file written arguments by 4 pm on 07.05.2019. The orders passed by the Trial Court on 07.05.2019 are as follows:-

"ARC No. 25865/16 Sharda Ahuja Vs Suresh Kumar 07.05.2019

Present: Ms. Kirti Atri, Ld. Proxy counsel for petitioner along with petitioner.

Sh. Ravi Dhanger, Ld. Proxy counsel for respondent along with attorney of respondent.

Perused the file.

At the joint request, be awaited at 11.00 am.

(Ajay Nagar)

Addl. Rent Controller(W)

THC/Delhi.07.05.2019

At 11.35 a.m.

Present: Ms. Kirti Atri, Ld. Proxy counsel for petitioner along with petitioner.

Sh. Amit Kumar, Ld. Proxy counsel for respondent along with attorney of respondent.

Perused the file.

An application also moved U/S 151 CPC by the Ld. Counsel for respondent.

Perused the application whereby the Ld.

Counsel for respondent seeks adjournment for two weeks.

Perused the application and record.

Perused the file which shows that it is one of the old matters pending in this court and the court is inclined to dispose it of as early as possible. Heard the Ld. proxy counsel for petitioner and Ld. Counsel for respondent.

However, be awaited in the interest of justice, at the request of petitioner at 12.00 noon. Application is kept pending till 12.00 noon.

(Ajay Nagar)

Addl. Rent Controller(W)

THC/Delhi.07.05.2019

At 12.00 noon

Present: Ms. Kirti Atri, Ld. Proxy counsel for petitioner along with petitioner.

Sh. Amit Kumar, Ld. counsel for respondent along with attorney of respondent.

Heard.

Perused the file.

Ld. Proxy counsel for petitioner again seeks pass over on the ground that the Ld Counsel for petitioner is busy at Dwarka Court Complex. On the other hand, one application has been filed by the respondent seeking adjournment on the ground that he wants to get the present matter transferred to the another court and one transfer appeal is pending before the Ld. District & Sessions Judge (West) as the application for transfer of case has already been dismissed by the Ld. SCJ-cum-RC(West).

Perused the file.

Perused the last order dated 15.04.2019 which shows that last and final opportunity was given to both the parties and it was made clear to both the parties that in case the arguments not advanced on the next date of hearing matter shall be fixed for orders. In view of material on record, this court is not inclined to give adjournment and further pass over also not possible as this court is recording the evidence in some of the oldest matters. As such, application filed by the respondent is dismissed. Matter is reserved for Judgment/Order/Clarifications, if any on 14.05.2019. However, both the parties are at liberty to file the written arguments today itself till 04.00 p.m. At the request of Ld. Counsel for respondent, a copy of this order be given dasti to the respondent. Petitioner is also at liberty to have copy thereof dasti."

5. The petitioner thereafter filed an application for permission to file written synopsis and case laws and to advance oral arguments. That application has been disposed of by the Trial Court by the impugned order dated 13.05.2019.

The application of the petitioner for permission to file the written synopsis and case laws has been allowed by the Trial Court, subject to the payment of costs. However, the application to place oral arguments has been rejected.

6. I have been informed by learned counsel for the petitioner that the case is now fixed before learned Trial Court for judgment/ orders/ clarifications on 29.05.2019. However, in the transfer appeal filed by the petitioner, there is a stay of proceedings before the Trial Court until today and the matter is set down for arguments before the learned District and Sessions Judge today.

7. Upon a perusal of the orders above, I am not inclined to entertain this petition under Article 227 of the Constitution. It appears that opportunities were granted to the respondent in the proceedings at the stage of recording of evidence. When the evidence was closed on 15.04.2019, it was expressly recorded that if arguments are not advanced on the next date of hearing, the matter shall be fixed for orders. The date of hearing was also changed at the request of the learned counsel for the petitioner, with a reiteration of the above. On 07.05.2019, when the matter was taken up by the Trial Court, the transfer appeal was filed but there was no stay as the matter had not come up for hearing. The petitioner's transfer application had already been dismissed by the learned SCJ-RC-West. There was no justification, as of 07.05.2019, for the petitioner to seek a further adjournment, in view of the pendency of the transfer appeal. The Trial Court did afford a final opportunity to both the parties to file written arguments, for which also time was extended by the impugned order, albeit upon payment of costs. The petitioner has, in fact, filed the written synopsis and case laws, which will be duly considered by the Trial Court. In the circumstances, in my view, the interest of justice would be served by observing that the Trial Court may, if it considers necessary, on perusal of the written synopsis and case laws submitted by the petitioner, call for such clarifications as required from learned counsel for the petitioner herein.

8. As noted hereinabove, the transfer appeal is pending before the District & Sessions Judge and proceedings before the Trial Court have been stayed. The present order is not intended to influence the decision on that transfer appeal in any manner and the same is to be decided on merits, including with respect to the terms of the order to be passed therein.

9. Learned counsel for the petitioner also informs that another petition [CM(M) 740/2019] is pending before this Court against the aforesaid order dated 10.04.2019 with regard to the question of re-examination. She states that the said petition is listed on 24.07.2019. In my view, the present petition can be disposed of in terms of this order without prejudice to the rights and contentions of the parties in CM(M) 740/2019.

10. The petition stands disposed of in the terms aforesaid.

11. A copy of the order be given dasti under the signatures of the Court Master.