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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 642/2022, CM APPL. 30051/2022 (stay) and CM
APPL. 30052/2022 (Exemption)

SURINDER KUMAR (DECEASED)
THROUGH LR Petitioner
Through: Mr. Salib Gurdeep Singh, Adv.

versus

SMT RAM DITTI (DECEASED)
THROUGH LRS Respondent
Through: Mr. Prabhat Ranjan, Adv.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT(ORAL)

% **11.07.2022**

1. This petition under Article 227 of the Constitution of India assails the order dated 28th September 2021, passed by the learned Senior Civil Judge (“the learned SCJ”) in RC ARC 78979/2016 (*Surinder Kumar v. Ram Ditti*). The impugned order reads thus:

“RC ARC 78979/2016
Surinder Kumar Vs. Ram Ditti

28.09.2021

Present:- Ld. Counsel for the parties.

Fresh vakalamama filed on behalf of
respondent no. 2,3,4 and 5.

Matter is listed for final arguments.

An application for recalling of order dated 26.03.2021 has been filed on behalf of respondents.

Arguments heard. Application is perused.

In view of the submissions and reasons mentioned, the application is allowed.

Put up for further RE on 04.10.2021.

Sd.

(Aditi Garg)

**SCJ-cum-RC: Central District:
28.09.2021”**

2. I may note, at the very outset, that an order such as that impugned in the present petition cannot, legally, be passed. An application seeking recall of an order cannot be allowed without any reasons whatsoever. All that is said in the impugned order is that, in view of the submissions and reasons mentioned in the recall application, the application is allowed and the order dated 26th March 2021 is recalled. On the face of it, this order is perfunctory, and ought not to have been passed in such a fashion.

3. In order to avoid multiplicity of litigation, I have, nonetheless, examined the order dated 26th March 2021 as well as the application seeking recall of the said order. The order dated 26th March 2021 reads thus:

“RC ARC 78979/16
Surinder Kumar Vs. Ram Ditti

26.03.2021

Present: Ld. counsel for petitioner.

One Sh. Jitender Kumar has appeared. However, the name of Sh. Jitender Kumar does not figure in the memo of parties.

As per Court record, last and final opportunity was granted to respondent to lead RE.

Previously also RE was closed vide order dated 20.08.2019 and thereafter, same was re-opened vide order dated 03.10.2019. On 10.01.2020, it has been directed that in case respondent does not lead evidence, RE would be closed.

Since, No RW present today and considering the previous conduct of the respondent, RE is hereby closed.

Re-list for final arguments on 10.05.2021.

Sd.
(Aditi Garg)
SCJ-cum-RC: Central District:
26.03.2021”

4. A reading of the aforesaid order dated 26th March 2021 reveals that the learned ASCJ has sought to justify her decision to close the respondent's evidence (RE) on two considerations. The first is that, on an earlier occasion, RE was closed *vide* order dated 20th August 2019 and, later, reopened by the order dated 3rd October 2019. The second is that, though, on 10th January 2020 it was specifically directed that in case the respondents did not lead evidence, RE would be closed, the respondent's witness was absent on 26th March 2021.

5. The first of the aforesaid two reasons may not be sufficient as a ground to close RE. The Supreme Court in *State Bank of India v. Chandra Govindji*¹, has held that, where repeated adjournments are allowed, the adjournments, once allowed, cannot thereafter be re-examined, as there is a presumption that adjournments were validly granted. Where a party appeals against the grant, or refusal of an adjournment on a particular date, therefore, the Court is required to examine whether the ground for adjournment on that date was justified or not, and cannot be unduly influenced by the number of adjournments granted earlier.

6. Applying the said principle to the present case, the Court would essentially have to examine whether the absence of the respondent's witness on 26th March 2021 was sufficient ground to close the RE.

7. In the application filed by the respondent seeking recall of the said order, the ground taken was that, on 26th March 2021, the respondent's witness suffered a cardiac arrest and had to be hospitalized. Thereafter, it is stated, in the application, that the father of learned Counsel for the respondent expired and, later, the learned Counsel himself. Consequent to the their falling prey to the COVID-19 pandemic.

8. It is obvious, therefore, that sufficient cause was made out for non-appearance of the respondent's witness on 26th March 2021 as well as for the delay of six months in moving an application seeking

¹ (2000) 8 SCC 532

recall of the order.

9. In the interest of ensuring that respondent is not deprived of its right to lead evidence and to prove its case, I am of the opinion that the respondent may be granted only one opportunity to produce the respondent's witnesses.

10. Mr. Prabhat Ranjan, learned Counsel for the respondent, submits that he seeks leave to produce only two witnesses, namely, Kishan Lal and Jitender Kumar. The respondent is directed to ensure that both the aforesaid witnesses are present before the learned SCJ on 1st August 2022, when the matter is not listed before her.

11. It is made clear that if either of the respondent's witnesses is absent on the said date, the right to lead evidence of the said witnesses shall stand closed.

12. The respondent is directed to ensure that the affidavits-in-evidence of both the aforesaid witnesses are positively filed before the learned SCJ on or before 22nd July 2022, after service of advance copies thereof on the learned Counsel for the petitioner, electronically or otherwise. Failure to do so would result in forfeiture of the right to lead the evidence of the said witnesses.

13. In case one more date is needed to complete the recording of evidence of the aforesaid two witnesses, the learned SCJ is at liberty to act accordingly.

14. This petition is disposed of in the aforesaid terms *in limine*, with no orders as to costs. Miscellaneous applications also stand disposed of.

C.HARI SHANKAR, J

JULY 11, 2022
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