

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on : 17th September, 2021**
Decided on : 07th October, 2021

+ **CM(M) 520/2021**

VANEETA KHANNA & ORS. Petitioners
Through: Petitioner No.1 in person

Versus

VIKRAM SEHGAL Respondent
Through: In person

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

1. The present petition under Article 226 of the Constitution of India impugns the following three orders passed by the ADJ-02 (West), Tis Hazari Courts, Delhi passed in Civil Suit No.611999/2016:

- (i) Order dated 16th April, 2021 dismissing the application filed by the petitioners/defendants under Section 151 of the Code of Civil Procedure, 1908, (CPC), for placing on record complaint dated 11th November, 2014 against the petitioners' previous counsel for not conducting proper cross-examination of the respondent's/plaintiff's witness.
- (ii) Order dated 16th April, 2021 dismissing the application filed on behalf of the petitioners under Order 18 Rule 17 of CPC for recalling respondent's witnesses namely respondent himself, Jai

Bhagwan, Charan Dass and Bijender Kumar for further cross-examination.

(iii) Order dated 16th April, 2021, only partly allowing the application of the petitioners under Order 8 Rule 1A(3) of CPC for taking on record documents filed by the petitioners/defendants.

2. After hearing the parties, judgment was reserved in the matter on 17th September, 2021. Both parties have filed written submissions which have been taken on record.

3. The suit from which the present petition arises was a suit for recovery of Rs.11,90,000/-. The said suit was contested by the petitioners by filing a written statement, wherein it was stated that the alleged Will dated 20th June, 2006 of the petitioner no.1 and respondent's mother was forged and fabricated and the alleged Will dated 26th March, 2007 of petitioner no.1 and respondent's father was executed under force and coercion. The aforesaid Wills are also subject matter of an earlier partition suit filed on behalf of the petitioner no.1 which is also pending before the Trial Court. The issues were framed in the present suit on 15th July, 2010 and thereafter evidence was led on behalf of the respondent and the same was concluded in 2015. On 15th September, 2016 affidavit of evidence was filed on behalf of the petitioners. However, till date the cross-examination of the petitioner's witnesses has not commenced.

4. As regards the impugned order dated 16th April, 2021, dismissing the application of the petitioners filed under Section 151, CPC, for placing on

record complaint against their previous counsel, no submissions were made on behalf of the petitioners impugning the said order. The said order correctly records that the court cannot take action against a counsel for not properly conducting the case. Therefore, the complaint sought to be placed on record against the counsel was rightly dismissed.

5. As regards the impugned order in respect of application filed by the petitioners under Order 8 Rule 1A(3), CPC, the petitioners were allowed to place on record order dated 16th May, 2014 passed in the partition suit and copy of the list of documents filed by the father of petitioner no. 1 and the respondent, C.L. Raizada in the said suit. The grievance of the petitioners against the said impugned order is that they were not allowed to place on record relevant documents bearing signatures of the mother of petitioner no. 1 and the respondent, in support of their contention that the mother's Will dated 20th June, 2006 is forged and fabricated.

6. The petitioner has placed on record a subsequent order dated 27th August, 2021 passed by the Trial Court, whereby the applications filed by the petitioners under Order 7 Rule 14, CPC, for filing list of additional witnesses and application under Order 16 Rule 1 and 3, CPC for summoning additional witnesses, have been partly allowed by the Trial Court. The Trial Court while partly allowing both the applications observed that documents bearing the signature of the mother of the petitioner no. 1 and the respondent are relevant for the present suit. In the said order, it was also noted by the Trial Court that the authenticity of both the wills are facts in issue in the present suit. In view of the aforesaid order dated 27th August, 2021, the grievance of the petitioners in respect of the impugned order dated 16th

April, 2021, disallowing the petitioners to place on record relevant documents bearing signatures of the mother of petitioner no.1 and the respondent, stands redressed.

7. Vide the order 27th August, 2021, the following witnesses are taken on record and are summoned with relevant documents:

- (i) Clerk/official from Allahabad Bank, 1A Banarasi Dass Estate Timarpur, Delhi-54 **along with Account Opening Form and other documents containing the signature of Late Smt. Pushpa Sehgal when she signed while getting her account opened.**
- (ii) Mr. Deepak Jain, **Handwriting Expert.**
- (iii) Clerk from office of Senior Superintendent of Post Office, Delhi-54, North Postal Division along with the **applications signed by Pushpa Raizada for purchasing the KVP's.**
- (iv) Clerk from Allahabad Bank, Ground Floor, 17, Parliament Street, New Delhi to bring **all documents signed by Pushpa Raizada for getting her locker no.401, opened.**

8. The main grievance of the petitioners is in respect of the impugned order dated 16th April, 2021 with regard to the application filed by the petitioners under Order 18 Rule 17, CPC, for recalling the respondent's witnesses, namely, respondent himself, Jai Bhagwan, Charan Dass and Bijender Kumar for further cross-examination.

9. The petitioner no. 1 appearing in person has submitted that:

- (i) The petitioners want to recall the aforesaid witnesses to confront them with the undated statements given by the said witnesses in the partition suit which are contrary to the evidence given by the said witnesses in the present suit.
 - (ii) Since these undated statements are not on oath, they cannot be exhibited and therefore, it is sought that the aforesaid witnesses may be recalled so that they can be confronted with the aforesaid undated statements.
 - (iii) The lawyers engaged by the petitioners earlier, erroneously did not confront the said witnesses with the undated statements in the course of the cross-examination conducted by them and that the petitioners cannot be allowed to suffer on account of the fault of her lawyers.
10. Respondent appearing in person on advance notice has submitted that:
- (i) The aforesaid application has been filed belatedly inasmuch as the plaintiff's evidence in the suit got concluded on 17th December, 2015.
 - (ii) The undated statements that are sought to be put before the respondent's witnesses were filed in the partition suit on 29th August, 2008 and hence were already available with the petitioners during the cross examination in the present suit.
 - (iii) All the three witnesses were exhaustively cross-examination by the counsel for the petitioners.

- (iv) It is falsely averred that the cross-examination was conducted by the previous counsels in a faulty manner as the said previous counsels are still appearing for the petitioner no. 1 and her husband in other proceedings.
- (v) Petitioner no.1 herself is well-versed with her case and has been appearing in person on all the dates of the case and the affidavit filed by her in support of the present applications also states that she is well-versed with the facts of the case.
- (vi) Petitioners did not disclose that an earlier application under Order 18 Rule 17 of CPC filed for recalling respondent's witness, namely, Jai Bhagwan has been dismissed by the Trial Court vide order dated 20th July, 2016 and that no appeal has been filed against the said order.
- (vii) The present application has only been filed so as to fill-in the lacuna and to prolong the proceedings in her case and therefore, cannot be allowed.

11. I have heard the rival contentions and perused the impugned order passed by the Trial Court and the written submissions filed by both the parties.

12. The Trial Court has dismissed the aforesaid application filed on behalf of the petitioners under Order 18 Rule 17 of CPC by observing that:

- (i) The statements of the witnesses sought to be confronted to them were filed on 29th August, 2008 in the partition suit between the same parties.
- (ii) The recovery suit was filed on 29th October, 2009 and the said witnesses were cross-examined at length in the year 2015.
- (iii) The petitioners despite being aware of the statements, the aforesaid witnesses were not confronted with the said statements.
- (iv) The erstwhile counsels may have taken a strategic call as not to confront the said witnesses with the aforesaid statements. Therefore, it cannot be conclusively said that the erstwhile counsels had not conducted the cross-examination properly.
- (v) Petitioners are bound by the acts of their advocate when it was done while conducting the case on behalf of the petitioners.
- (vi) It was noted in the order dated 19th March, 2015 of the Trial Court passed in the present suit that the petitioner no. 1 was threatening the aforesaid witnesses and taking into account her conduct, the in-charge of PP, Tis Hazari was called and the SHO was directed to depute personnel to ensure safety of witnesses and decorum of court.
- (vii) The documents proposed to be put to the respondent/plaintiff have been obtained from banks and police etc. and have not come from the custody of the respondent. The documents were

neither prepared by him and nor were bearing his signature. So, he cannot be expected to comment on them.

13. I have examined the impugned order passed by the Trial Court. Conducting cross examination in a suit is a specialized job. It is only with experience that a counsel develops skills for cross examination. Different Advocates may conduct cross-examination in different manner and it may not be correct to say that which is the correct approach and which is not. Hence, at the mere behest of a dissatisfied litigant, it cannot be taken that the advocate has not conducted proper cross-examination of the witnesses. The Advocate in his wisdom conducts the cross-examination of the witnesses and a litigant cannot approach the court three years later and be heard to say that the cross-examination was not conducted properly.

14. Therefore, the impugned order has correctly noted that the litigant is the principal who is bound by all acts of his Advocate, who acts as his agent, so long as the aforesaid acts are conducted in the course of his professional duty. Even if it is assumed that the contention of the petitioners is correct that the cross-examination was not conducted in a proper manner, the petitioners would still be bound by the same.

15. It is also a matter of record that the petitioner no.1 was herself present in Court when the cross-examination was conducted and that all the three witnesses were exhaustively cross-examined by the advocate appearing on behalf of the petitioners. It is also borne out from the record that the petitioner no.1 has been appearing herself throughout the proceedings and she is well aware of the facts and circumstances of the case as was stated in the affidavit filed in support of the applications.

16. As rightly pointed out by respondent in person, the petitioners are guilty of concealment of facts. The fact that a similar application filed on behalf of the petitioners was dismissed by the Trial Court vide order dated 20th July, 2016 should have been disclosed in the present application.

17. It is a settled principle of law that the provisions of Order 18 Rule 17 of CPC cannot be used by a party to fill-in lacuna in his case. The petitioners were given full opportunity to cross-examine the witnesses of the respondent and the said witnesses were exhaustively cross-examined. Now after a lapse of three years, the petitioners cannot be allowed to fill-in lacuna in their case by seeking to recall the aforesaid witnesses. Reference in this regard may be made to the decision of the Hon'ble Supreme Court in **K.K. Velusamy Vs. N. Palanisamy** (2011) 11 SCC 275. Relevant portion of the same is set out below:

*9. Order 18 Rule 17 of the Code enables the court, at any stage of a suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The power to recall any witness under Order 18 Rule 17 can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any doubts it may have in regard to the evidence led by the parties. **The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. (Vide Vadiraj***

Naggappa Vernekar v. Sharadchandra Prabhakar Gogate [(2009) 4 SCC 410 : (2009) 2 SCC (Civ) 198].)

10. Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo motu, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.

18. Therefore, there is no infirmity in any of the impugned orders passed by the Trial Court that warrant interference of this Court in exercise of jurisdiction under Article 227 of the Constitution of India.

19. Dismissed.

AMIT BANSAL, J.

OCTOBER 07, 2021

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