

6CS423/2014 1234/16SANDHYA GUPTA

Vs. RANI BANSAL

07.09.2024

Present : Sh. Ashish Chaudhary, Ld. Counsel for the plaintiff
through V.C.
Defendant in person.

It appears that the date fixed before the Hon'ble High Court of Delhi is 28.10.2024 and pronouncement of the final judgment by this Court has been paused, till that time. However, that cannot be an impediment before this Court to adjudicate upon the present application under Order 18, rule 17, CPC, or otherwise, hearing final arguments, in the matter, therefore, I have already heard arguments on the on the application under Order 18, rule 17, CPC by the Ld. Counsels for the parties and following order on the application is being passed :-

The matter is pending adjudication on the application moved by the defendant U/o 18, rule 17, CPC, seeking recall of DW1 Smt. Rani Bansal, on the ground that DW1 was further cross-examined and discharged, vide Order, dated 20.10.2023 and the Court had suo-moto closed the defendant's evidence on the same day, which Order has been challenged before the Hon'ble High Court of Delhi in CM (M) No. 1972/2023. In the present application, the defendant had specifically, pleaded that she had neither executed mortgage deed, dated 30.12.2011, nor received a loan of Rs.10,00,000/-, as alleged and had filed her written statement through her SPA/Son Sh. Saurabh Bansal. The applicant/defendant had inadvertently not stated the factum of filing of the WS through attorney in his evidentiary affidavit, further, the above said SPA could not be brought on record and prayer

is made for recalling DW1 Smt. Rani Bansal to prove her written statement.

Sh. Chaudhary has already submitted that he does not want to file any formal reply to the application and further submitted that once the matter is fixed for addressing final arguments by the parties, then no such application or any other application can be moved legally. He also submitted that the application U/o 18, rule 17, CPC cannot be utilized to fill up a lacunae, left by a party in its evidence and rather, the rule gives power to the Court to seek clarification from a witness, if it finds necessary in the interest of justice. He further submitted that the matter has been languishing for addressing final arguments by the parties since 30.11.2023.

On the other hand, Sh. Rupesh Kumar submitted that a written statement was filed in the matter, which was, duly, signed by deceased Sh. Saurabh Bansal, the son of the defendant, who unfortunately expired on 26.01.2024 and the application has been necessitated, as the defendant has executed the Special Power of Attorney and in the event of demise of Sh. Saurabh Bansal, the same has to be proved and placed on record to ratify, the written statement filed in the matter.

In rebuttal, Sh. Chaudhary submitted that the application under Order 18, rule 17, CPC has even been moved prior to the demise of Sh. Saurabh Bansal and therefore, reeks of ulterior motive of the defendant. Although, the submissions, as made, is not borne out on the record, as the application was filed only on 30.01.2024.

I have heard Ld. Counsels for the parties and perused the record. The perusal of the record would reveal that the present is a suit for recovery of Rs.10 Lakhs, instituted on 27.08.2012, by the plaintiff, against the defendant. Issues in the present matter were framed on 27.09.2014 and plaintiff's evidence was concluded on 07.12.2018 and matter was listed for defendant's evidence for 05.02.2019, however, despite granting ample opportunities to the defendant, only evidence of the DW1 was completed upto 20.10.2023, however, on the same day, Sh. Kumar sought time to lead further evidence of another witness Sh. Girish Bansal, who is husband of the defendant and another witness Sh. Saurabh Bansal, son of the defendant and further some other witnesses of record, which was opposed by Sh. Chaudhary. Sh. Kumar had further submitted that DW Sh. Girish Bansal is present in the Court and opportunity should be allowed, but as there was no affidavit of any such witness, filed on record, though, mentioned in the list of witnesses, filed on behalf of the defendant only on 21.10.2014 without any application seeking condonation of delay for taking on record the said list, as the list was placed on record by the defendant after the period of 15 days, as provided under the rules. Even, no other affidavit of any other DW had been filed upto 20.10.2023, nor copy supplied and under such circumstances, this Court was inclined to close the DE and accordingly, DE stood closed and matter was listed on 30.11.2023 for hearing final arguments, on which date, arguments were addressed by Sh. Chaudhary, who stated that the case of the plaintiff had been established on record, however, an adjournment was sought by proxy Counsel Sh. Manish Chahar for the defendant, appearing through V.C., on

the ground that main Counsel Sh. Rupesh Kumar was busy in Hon'ble High Court of Delhi and the matter was listed for 30.01.2024 for hearing further final arguments and parties were directed to submit written arguments with copies to other side in advance and against receipt and on 30.01.2024, written submissions were filed on behalf of the plaintiff and copy was given to Sh. Kumar, who had filed the present application.

From the perusal of record, it appears that DW1 had tendered her evidentiary affidavit way back on 26.09.2019 as well as 06.04.2021 and was extensively cross-examined by the Ld. Counsel for the plaintiff on 18.07.2022 and 20.10.2023, well within the presence of the Ld. Counsel for the defendant, namely, Sh. Rupesh Kumar. The only contention raised in the present application is with regard to recall of DW1 to prove the factum of filing of the WS through attorney Sh. Saurabh Bansal in her evidentiary affidavit and the attorney had expired on 26.01.2024, however, the principal is still alive. The attorney was acting on instructions / behalf of the principal, who is still alive and the WS was filed on her behalf. Thus, the present application, clearly, appears to be an attempt to delay the matter and the application has been filed just to gain time and to waste precious judicial time of the Court. Further, application in hand is not even maintainable under the provisions of Order 18, rule 17, CPC, as the same relates to the power of the Court to recall any witness at any stage, but only the one, who has already been examined and thereafter, the Court may put such questions to him, as it thinks fit for clarification of the such deposition/testimony, already given by the witness, so recalled and

thus, it appears that the submissions made by Ld. Counsel for the plaintiff has considerable force and the present application cannot be allowed at all, as the matter has been pending since 2012 and is being lingered upon by the parties, on one pretext or other and as such, I am not inclined to prolong it further, as in any case, the application in hand, is not, even maintainable and is, accordingly, **dismissed**.

Plaintiff has already addressed his final arguments before the Court on 30.11.2023.

Put up on **10.12.2024** for further final arguments on behalf of the defendant, in the matter.

It appears that plaintiff has already filed written arguments on record on 30.01.2024, however, no such written arguments have still been filed on behalf of the defendant, as directed, earlier. Accordingly, defendant is directed to submit written arguments online with copies to other side in advance and against receipt.

(Sanatan Prasad)
District Judge-02 (East)
Karkardooma Courts/Delhi/07.09.2024