

IN THE COURT OF SH. HEM SINGH, DISTRICT JUDGE -01,
EAST DISTRICT, KARKARDOOMA COURTS, DELHI

CS No. 616/18
Prashant Sharma
vs.

Deputy Director (Horticulture)

13.11.2024

**ORDER ON APPLICATION UNDER ORDER XVIII RULE 17
READ WITH SECTION 151 OF CPC MOVED ON BEHALF
OF THE DEFENDANT**

1. By way of this order, I shall dispose of an application u/O XVIII Rule 17 r/w section 151 of CPC filed on behalf of the defendant, seeking recalling of PW-1 for his cross-examination. It is stated in the application that the matter was fixed for cross-examination of PW-1 on 17.03.2023, however main Counsel for the defendant could not appear on that day in the court due to final examination of her son. In support of her contention, Ld. Counsel for the defendant has placed on record the date sheet schedule of examination of her son.

It is further stated in the application that non-appearance of the Counsel for the defendant on 17.03.2023 was neither intentional nor deliberate but, due to the aforesaid bonafide reason. Ld. Counsel for the defendant argued that she had authorized her associate advocate Ms. Neha Rao to cross-examine the said witness, however she was not allowed to cross-examine the PW-1 on the ground that Proxy Counsel has no authority to cross-examine the witness. It is further argued that no prejudice would be caused to the plaintiff if the present application is allowed as the said witness was not cross-examined

by the defendant on any earlier occasion and therefore, it cannot be said that defendant has moved the present application to fill any lacuna in defendant's case.

2. Reply to the aforesaid application was filed on behalf of the plaintiff, stating that the present application is not maintainable since the main Counsel of defendant namely Ms. Bindiya Savara has no authority to represent the defendant in the present matter as there is no vakalatnama on record, has ever filed in her favour by the defendant.

3. A perusal of record shows that 'brief transmission form' is already filed by the defendant, authorizing Ms. Bindiya Savara as its Counsel and requesting her to defend the present suit. It is argued by Ld. Counsel for the defendant that she is a Govt. Counsel and as a matter of practice, there is no need of filing separate vakalatnama, if brief transmission form is filed by the defendant, authorizing her to represent the defendant.

4. I am convinced with the arguments addressed by Ld. Counsel for the defendant. It is settled law that nomenclature of a document will not matter. As per record, 'brief transmission form', authorizing Ms. Bindiya Savara, Advocate to represent the defendant in the present matter is already on record, therefore it cannot be said that she has no authority to represent the defendant in the present case. Perusal of the document i.e., schedule of date sheet of examination of son of Ld. Counsel for the defendant shows that final examination of son of Ld. Counsel was scheduled on 17.03.2023.

5. Ld. Counsel for the defendant has sufficiently explained the reason of her absence on 17.03.2023, therefore

considering the aforesaid explanation and the fact that technicalities should not come in the way of doing substantial justice, *the present application of defendant is allowed.*

PW-1/plaintiff, as mentioned in the application be recalled for his cross-examination for the next date of hearing. However, it is made clear that no further opportunity shall be given to the defendant to cross-examine the PW-1.

The application of the defendant is disposed of accordingly.

(HEM SINGH)
District Judge-01
East/KKD Courts/Delhi