

04.03.2020

Present : Sh. A.K. Mishra, Advocate, for the plaintiff.
None for the defendant.

Case file is perused.

It is observed that an application, under Section 151 CPC, has been moved, on behalf of the plaintiff, on 24.12.2019, for recalling of the order, dated 12.12.2019, whereby, the right of the applicant/plaintiff to cross-examine DW-1 Sh. Veer Singh, was closed.

2. In the application, it has been stated that on 13.11.2019, there was a strike by the advocates and therefore, the matter was adjourned to 12.12.2019, without knowledge of the Ld. counsel for the plaintiff and on 12.12.2019, the Ld. counsel for the plaintiff could not attend this court, as he had already taken dates for evidence at Rohini Court, Delhi, for 12.12.2019.

3. It is further stated that the Ld. counsel for the plaintiff was busy in adducing evidence in other cases already listed for 12.12.2019, at Rohini courts, Delhi, and therefore, he could not come for cross-examination of DW-1 Sh. Veer Singh, on 12.12.2019. It is further stated that in the absence of the Ld. counsel for the plaintiff, at about 12.30 p.m., the proxy counsel for the applicant had appeared before the court and informed the court that the Ld. counsel was busy at Rohini Courts and he requested to keep the matter for 3.00 p.m. But, despite request, this court was pleased to close the right of the plaintiff for cross-examination of the witness and the matter was fixed for final arguments, on 08.01.2020.

4. It is further stated that the absence of the Ld. counsel for the applicant/plaintiff was neither intentional nor deliberate and the right of cross-examination is a valuable right of the applicant/plaintiff and therefore, the order, dated 12.12.2019, may be recalled and an opportunity may be granted to the plaintiff to cross-examine DW-1 Sh.Veer Singh, on the next date of hearing.

5. No reply to this application has been filed, on behalf of any of the defendants, till date, despite opportunity.

6. Arguments on the said application were addressed by Sh.A.K. Mishra, Advocate, for the plaintiff; Sh. Umesh Kapoor, Advocate, for defendants No.2 to 5 and Sh. Harshvardhan Pandey, Advocate, for defendants No.6 & 7, on 06.02.2020.

7. I have carefully perused the case file and I have also given my considered thoughts to the arguments addressed by the Ld. counsel for the parties.

8. Perusal of the record shows that the plaintiff's evidence was closed, vide orders, dated 07.10.2017 and thereafter, on 09.09.2019, the affidavit of DW-1 Sh. Veer Singh was tendered in evidence. Cross-examination of the witness was deferred on the request of the witness, on his medical grounds. On 10.10.2019, cross-examination of DW-1 Sh. Veer Singh was recorded partly and the remaining cross-examination of the witness was deferred, on the request of the Ld. counsel for the plaintiff, on his personal grounds. Therefore, on 13.11.2019, the lawyers were reported to be on strike and therefore, on request of the parties, cross-examination of DW-1 Sh.Veer Singh, was again adjourned for 12.12.2019.

9. On 12.12.2019, the Ld. counsel for the plaintiff had failed to appear before the court, despite repeated calls and at the time of

second call, after 12.30 p.m., the Ld. proxy counsel for the plaintiff has reported that the Ld. counsel for the plaintiff was not available for cross-examination of DW-1 Sh. Veer Singh, as he was busy in some other court at District Courts, Rohini. It was further disclosed that the Ld. counsel for the plaintiff would be available only after 3.00 p.m.. A request for adjournment was also made, on behalf of the plaintiff.

10. Perusal of the record further shows that several opportunities had already been granted to the plaintiff for cross-examination of DW-1 Sh. Veer Singh and therefore, this court had closed the opportunity for the plaintiff to cross-examine DW-1 Sh. Veer Singh, vide orders, dated 12.12.2019. Furthermore, the Ld. counsel for the plaintiff cannot take the benefit of Lawyers' Strike on 13.11.2019, as the Hon'ble Supreme court has already deprecated this tendency and has declared the strikes by the Lawyers as unlawful/illegal. It was also the duty of the plaintiffs and their Ld. counsel for check up the orders passed on 13.11.2019 and to note down the next date of hearing. Nowadays, the daily court orders are also available on the website of the Delhi District Courts and therefore, the averment of the plaintiff and his counsel that the date of hearing for 12.12.2019 was fixed, without their knowledge is devoid of any merits.

11. However, since the cross-examination of DW-1 Sh. Veer Singh, had already been conducted by the Ld. counsel for the plaintiff, partly, on 10.10.2019, in the considered opinion of this court, it would be appropriate, if one more opportunity is granted to the plaintiff for remaining cross-examination of DW-1 Sh. Veer Singh and the delay, due to the aforesaid fault of the Ld. counsel for the plaintiff, can be compensated in monetary terms. Therefore, in the interest of justice, the present application is hereby allowed, subject to imposition of a cost of Rs.3,000/- on the plaintiff. It is further directed

that only one opportunity shall be granted to the plaintiff for concluding the remaining cross-examination of DW-1 Sh. Veer Singh, after appearance of DW-1, in the court.

The application is disposed of accordingly.

Adjourned for payment of cost by the plaintiff and for remaining cross-examination of DW-1 Sh. Veer Singh and for arguments on the application of defendant No.6, under Section 151 CPC, dated 15.01.2020, on **15.04.2020**.

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BRIJESH KUMAR GARG
Addl.Distt Judge(NE)-01
KKD Courts/Delhi
04.03.2020