

18-09-2019

Present: Sh. R.S. Malik, counsel for IP-1

Ms. Priyanka Singh, proxy counsel for Sh. M.C.

Vashisth, counsel for IP-2.

Sh. Jitender Kumar, counsel for IP-8.

IP-6 in person.

Today, matter is fixed for disposal of two applications moved by IP-2 on last date of hearing which was actually the date for final arguments. Ms. Priyanka submits that main counsel is unwell but she has been duly authorised to address arguments. Arguments heard.

The two applications of IP-2 are U/s 114 CPC for recalling of order dated 31-7-18 and u/o 18 rule 17 CPC for recalling of IP-2 for further cross-examination. The grounds taken and reliefs claimed in both the applications are identical which are to allow IP-2 for his cross-examination. It is submitted that on 31-7-18, IP-2 was to be cross-examined but due to illness of his old age mother, he could not come on that day. Resultantly, the Court ordered that the examination of IP-2 will not be read in evidence.

Application has been opposed on multiple grounds. It was firstly argued by opposite counsels that IP-2 has not filed any document in support of the plea of illness of his mother. Secondly, IP-2, who himself is a practicing Advocate has not assigned any reason for the delay in moving the applications under disposal. It is also submitted that IP-2 has been appearing in other LAC cases even after 31-7-18 and copies of several order-sheets in LAC no.1621/16 are filed by Sh. Malik in which the presence of IP-2 Sh. Virender Kumar is noted. Dismissal of the applications is prayed stating that the outcome of the case is likely to expose the fake claim of the IP-2 hence applicant wants to delay the case to avoid such consequences. Reliance as been placed on the judgement tiled as *Noor Mohd. Vs. Jetha Nand & Anr.(2013) 5SCC 202.*

I have duly considered the rival submissions. The record has revealed that IP-2 was partly cross-examined on 05-4-18 and his further examination was deferred. Thereafter, on 02-5-18, 10-5-18, 23-5-18 & 04-6-18, IP-2

appeared in person but never entered the witness box for conclusion of his cross-examination. Thereafter, on 11-7-18 IP-2 defaulted in appearance and a summoned witness of IP-2 was examined by Sh. Shiv Kumar, Advocate under due instructions of IP-2. Then on 11-7-18, the evidence of all the IPs was closed by the Court. On the next date of 25-7-18, counsel for IP-1 pointed out that the cross-examination of IP-2 was not concluded and requested for opening of evidence. On that day, IP-2 was not present and directions were issued to IP-2 to appear on 31-7-18. None appeared for IP-2 on 31-7-18 and vide a detailed order, the evidence was closed.

The applicant/IP-2 has tried to assign reasons for his absence only on one date on 31-7-18 attributing the same to the illness of his mother. First of all, the plea is completely unsupported by any document. Secondly, it was not merely absence of IP-2 on only one date. From 02-5-18 till 31-5-18, case was taken up on several dates but IP-2 did not enter the witness box. There is no explanation in this regard. Even after 31-7-18, several dates have been held but IP-2 never

preferred to move the applications that have been moved at the fag end of trial after about one year and couple of months. The IP-2 has been appearing quite regularly in this Court in several reference petitions including the LAC No.1621/16. The copies of order-sheets of that case clearly reflect that IP-2 was very much appearing in the Court. I failed to understand what was stopping IP-2 from moving the applications for such a long period. It appears that the IP-2 was patiently waiting and watching for the fag end of the trial. Besides lacking in merits, the applications are lacking in bonfides. Both the applications are accordingly dismissed.

Matter is now listed for final arguments on 04-10-19.

NEERAJ GAUR)  
ADJ-1(N)/Rohini/Delhi/18-09-2019