

**09.09.2019**

**(Order on the applications – (1) seeking review of order dated 24.11.2018 and (2) u/s 5 of Limitation Act moved by the plaintiff and on the application u/s 151 CPC moved by defendant no. 2)**

Present: Husband of the plaintiff with proxy counsel Sh. Manish Kumar.  
None for the defendants.

**ORDER: -**

1. In the application u/s 5 of Limitation Act, the plaintiff seeks condonation of delay in filing the review application on the ground that due to busy schedule of the counsel for the applicant, the file could not be inspected in time which resulted in delay of 20 days in filing the application seeking review of the order dated 24.11.2018.
2. The plaintiff is aggrieved by the order dated 24.11.2018 by which the plaintiff was not allowed to call the witnesses mentioned at Serial no. 3 to 5 in the amended list of witnesses and seeks to review the said order. The said order was passed on 24.11.2018 and time to file the review application is 30 days from the said date, however the review application has been filed on 14.01.2019 and hence there is delay of 20 days. Considering the averments made in the application, since there is not such an inordinate delay in filing the review application, the application u/s 5 of Limitation Act is allowed and delay of 20 days in filing the review application is

condoned.

3. Now coming to the application of the plaintiff seeking review of order dated 24.11.2018 by which Ld. Predecessor declined the request of the plaintiff to call the witnesses mentioned at Serial No. 3 to 5 in the amended list of witnesses.
4. The grievance of the plaintiff is that the Court has not passed any reasoned order as to why those witnesses have been declined by the Court. It is contended that the plaintiff wishes to call witnesses mentioned at Serial No. 4 and 5 as the original documents of the suit property filed by the IO purportedly executed by plaintiff in favour of defendant no. 1 are different from the documents registered in Sub Register II Basai Darapur, Delhi. Ld. Counsel for the plaintiff also submitted during course of arguments that the witnesses mentioned at serial No. 3 to 5 in the amended list of witnesses are already there in the list of witnesses filed by the plaintiff on 02.08.2017 pursuant to the framing of issues. He submitted that there is error apparent on the face of record as despite there being the name of these witnesses in the original list of witnesses, the Court declined to summon them at the time when the plaintiff submitted amended list of witnesses. He further submitted that the aforesaid witnesses sought to be summoned by the plaintiff are only the official witnesses and their evidence is necessary to prove the case of the plaintiff that no documents have been executed by the plaintiff in avour of the defendant no. 1. Therefore, it has been prayed that order dated 24.11.2018 may be set aside and plaintiff may be

allowed to summon the witnesses mentioned at serial No. 4 and 5 in the amended list of witnesses.

5. The counsel for defendant no. 2 has opposed the application and prayed for dismissal of the same.

6. The defendant no. 3 has filed reply to the application contending that the contents made in the application are false, incorrect and not tenable and has prayed for dismissal of the application.

7. Arguments have already been heard. Record perused.

8. Perusal of record shows that the plaintiff had filed the list of witnesses on 02.08.2017 after framing of issues. Thereafter, the plaintiff moved an application u/o 16 rule 3 CPC and submitted the amended list of witnesses on 22.10.2018. Vide order dated 24.11.2018, the Ld Predecessor allowed the application u/o 16 rule 3 CPC and all the witnesses except witnesses at serial No. no. 3 to 5 were allowed to be summoned. It appears that it has escaped from the notice of Ld. Predecessor that the witnesses mentioned at serial Mo. 3 to 5 in the amended list of witnesses filed on 22.10.2018 were already mentioned in the list of witnesses filed by the plaintiff on 02.08.2017. Moreover, there is no reason why these witnesses at serial no. 3 to 5 in the amended list of witnesses were declined to be summoned by the Ld. Predecessor. Hence, there is an error apparent on the face of the record because despite mentioning of the name of the witnesses at serial no. 3 to 5 in the original list of witnesses, the same were not allowed to be summoned by the Ld. Predecessor. Hence, the order is

liable to be reviewed. Accordingly, the application is allowed and the plaintiff is allowed to summon the witnesses at serial no. 4 and 5 as prayed for in the review application.

9. Now, I shall take up the application moved by defendant no. 2 u/s 151 CPC for dropping of evidence by way of affidavit of Sh. Devak Ram Sharma, the handwriting expert and his report.

10. It is stated in the application that the plaintiff has filed a report of handwriting expert Sh. Kamal Kant Khandelwal on record and has referred the same in the plaint as well as in his affidavit in evidence. It is further stated that the said report has also been used to get an FIR registered u/s 156 (3) of Cr.P.C. by the plaintiff and in pursuance thereof an FIR has also been registered. It is further stated that after examining herself as PW-1 and her husband as PW-2, the plaintiff instead of examining Sh. Kamal Kant Khandelwal, firstly examined the IO of the aforesaid FIR as PW-5 regarding allegation of forgery on the documents under challenge. The plaintiff has also filed evidence by way of affidavit of Sh. Kamal Kant Khandelwal but the plaintiff did not get him examined and dropped the said witness. It is stated that the plaintiff has never sought permission of this Court to drop the said witness and filed affidavit of new Handwriting expert who appears to have been engaged by the plaintiff to counter the report already exhibited as Ex.PW5/3. It is stated that the new witness or his alleged subsequent report cannot be allowed to be taken on record because till date there is no order whereby the plaintiff

has sought permission of this Court to place on record any such report of Sh. Devak Ram, the handwriting expert. Therefore, it is prayed that report of Sh. Devak Ram as well as his evidence by way of affidavit may be struck down.

11. The plaintiff has filed reply to the application contending that the application u/o 16 rule 3 CPC moved by the plaintiff was duly allowed by the Court and the defendant did not raise any objection to the said application. It is stated that if the defendant no. 2 was not satisfied with the order, he could have raised the objection at the time of hearing on that application and if he wanted to challenge the said order, the only remedy was to file review application, but since the time for filing the review application has expired, the defendant no. 2 chose to move the application u/s 151 CPC which is not maintainable. It is contended that in the application u/o 16 rule 3 CPC, the plaintiff has clearly mentioned that she will drop the witness at serial No. 7 Sh. Kamal Kant Khandelwal from the list of witnesses as her husband has some dispute with the said witness with respect to payment of fee and the witness will not come to the Court for deposition. The amended list of witnesses was taken on record by the Court wherein name of Sh. Kamal Kant Khandelwal has not been mentioned. It is stated that the present case has been filed by the plaintiff and she must have all the opportunity to prove her case and the defendant is nobody to decide as to whom the plaintiff will examine and whom the plaintiff will not examine and the

defendant will have the opportunity to cross-examine the witnesses of the plaintiff. The plaintiff has prayed for dismissal of the application.

12. The grievance of defendant no. 2 by way of this application is that the plaintiff instead of examining Sh. Kamal Kant Khandelwal, the handwriting expert whose name is mentioned in the original list of witnesses filed by the plaintiff is seeking to examine new witness Sh. Devak Ram, the handwriting and finger print expert for which the plaintiff has never sought any permission from the Court and hence the plaintiff cannot be allowed to examine Sh. Devak Ram, the handwriting and finger print expert

13. Perusal of the record reveals that in the list of witnesses filed by the plaintiff on 02.08.2017, the name of handwriting and finger print expert Sh. Kamal Kant Khandelwal has been mentioned at Serial No. 7, however the plaintiff moved an application u/o 16 rule 3 CPC alongwith amended list of witnesses. In the said application, the plaintiff had stated in para no. 6 that she wants to add one more witness i.e. Sh. Devak Ram Sharma to substantiate his report whereby he has examined the signatures and thumb impression of the plaintiff upon the GPA, Agreement to Sell and affidavit, receipt and Will purportedly shown to have been executed by the plaintiff in favour of the defendant no. 1. It was further averred that the plaintiff will drop the witness no. 7 Sh. Kamal Kant Khandelwal from the list of witnesses as her husband had some dispute with the said witness with respect to the payment

of fee and he will not come to the Court for deposition. Vide order dated 24.11.2018, the Ld. Predecessor allowed the application and all the witnesses except witnesses mentioned at Serial No. 3, 4 and 5 in the amended list of witnesses were allowed to be summoned. The defendant did not challenge the said order dated 24.11.2018 before any appellate court nor sought review of the said order. Thus, by way of this application, the defendant no. 2 cannot agitate that the plaintiff cannot be allowed to examine any other handwriting expert and cannot bind the plaintiff to examine Sh. Kamal Kant Khandelwal as her witness. The defendant cannot restrict the right of the plaintiff to examine any witness which the plaintiff wants to examine in support of her case. Moreover, the defendant will get every opportunity to cross-examine the plaintiff's witnesses. The plaintiff has also categorically stated in her application u/o 16 rule 3 CPC that her husband had some dispute with the said witness Sh. Kamal Kant Khandelwal and for this reason, the said witness will not come to the Court for his deposition. Therefore, if the plaintiff wishes to examine another handwriting expert in support of her case instead of Sh. Kamal Kant Khandelwal, the defendant no. 2 cannot raise any objection to the same. Hence, I do not find any merit in the application moved by defendant no. 2 and the same is hereby dismissed.

14. Today, an application u/o 9 rule 7 CPC is moved by defendant no. 1. Copy supplied.

Put up for reply and arguments on the said application as well as for remaining PE on **27.11.2019**.

**(Balwant Rai Bansal)**  
ADJ-05(SW)/Dwarka Courts  
09.09.2019