

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.3873-3874/2023  
[@ SLP [C] NOS.1343-1344/2023]

DATO MOHAN SWAMI

Appellant (s)

VERSUS

MOHIT KUMAR

Respondent(s)

O R D E R

Leave granted.

We have heard learned counsel for the appellant and the respondent who appears in person.

We may notice that the proceedings in the testamentary jurisdiction are pending at the final stage of arguments. The present appeals arise from an impugned order dated 18.10.2022 *qua* application filed by the appellant for taking on record Examination in Chief on affidavit as evidence. The affidavit stated that certain averments have been made by the contesting respondent herein in other proceedings and sought to bring on record the same. In a nutshell the plea was that as per the appellant the replication of the plaintiff in original proceedings at an admission *qua* medical records and diagnosis of late Dr. Swami Rama, but on having resiled from the same during cross examination, the said documents were sought to be brought on record immediately thereafter on 27.04.2011. This plea is recorded in the order dated 02.02.2023 issuing notice where the statement

of counsel for the appellant is recorded that the passport and the medical history which was sought to be brought on record was only sought to be exhibited and the suit is at a final stage of hearing.

The respondent has urged that this was a belated endeavour on the part of the appellant to cover up the lacunae in evidence and the manner in which the replication was being read was not correct as when he stated that the same was a matter of record, it meant the medical record.

On hearing learned counsel for parties, we are inclined to accept the position as canvassed by learned counsel for the appellant that in the given facts and circumstances of the case, the passport and medical history which is already on record and is now sought to be exhibited, should be so permitted to be exhibited and the final hearing can proceed thereafter.

We are unable to accept the contention of the respondent that the purport of his admission amounted to a reference to medical records as that is not the terminology utilized.

In view of the aforesaid facts and circumstances, we set aside the orders in Testamentary Case No.01/2004 dated 18.10.2022 and the Civil Misc. Review Application No.188 of 2022 dated 30.11.2022 and permit exhibiting of the two documents on record with the Court to hear the appeal finally.

The appeals stand allowed leaving parties to bear their own costs.

.....J.  
[SANJAY KISHAN KAUL]

.....J.  
[AHSANUDDIN AMANULLAH]

.....J.  
[PRASHANT KUMAR MISHRA]

NEW DELHI;  
MAY 19, 2023

ITEM NO.19

COURT NO.2

SECTION XI

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 1343-1344/2023

(Arising out of impugned final judgment and order dated 18-10-2022 in IA No. 28/2022 in Testamentary Case No.01/2004 30-11-2022 in CMRA No. 188/2022 passed by the High Court Of Judicature At Allahabad, Lucknow Bench)

DATO MOHAN SWAMI

Petitioner(s)

VERSUS

MOHIT KUMAR

Respondent(s)

IA No. 60959/2023 - PERMISSION TO APPEAR AND ARGUE IN PERSON

Date : 19-05-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL  
HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH  
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

For Petitioner(s) Mr. Ajit Sinha, Sr. Adv.  
Mr. Sanjeev Agarwal, AOR  
Mr. Ekansh Agarwal, Adv.

For Respondent(s) Respondent-in-person

UPON hearing the counsel the Court made the following  
O R D E R

Application for permission to appear and argue  
in person is allowed.

Leave granted.

The appeals are allowed in terms of the signed  
order.

Pending application, if any, stands disposed of.

(ASHA SUNDRIYAL)  
ASTT. REGISTRAR-cum-PS

(POONAM VAID)  
COURT MASTER (NSH)

[Signed order is placed on the file]