



2025:DHC:7846



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 09.09.2025*+ **CM(M) 3771/2024, CM APPL. 64879/2024 & 64878/2024**

RABI GHOSH

.....Petitioner

Through: Mr. Mritunjay Kumar Singh and Ms.
Reetu Sharma, Advocates

versus

JAYANTA KUMAR GHOSH

.....Respondent

Through: Mr. Harsh Gupta, Advocate

CORAM: JUSTICE GIRISH KATHPALIA**J U D G M E N T (ORAL)**

1. Petitioner (*defendant in the suit for recovery of money*) has assailed order dated 10.05.2024 passed by the learned trial court, whereby on an application of the present respondent (*plaintiff in the suit*), opportunity of the petitioner for further cross examination of the present respondent was closed.

2. I have heard learned counsel for both sides.

3. On behalf of the present petitioner, it is submitted by learned counsel that although there is no error in the impugned order, but the petitioner deserves one more opportunity to cross examine the present respondent,



even if subject to cost. Learned counsel for the present petitioner submits that petitioner is a senior citizen, taking care of his ailing wife, because of which he could not pursue the litigation properly. No other submission has been advanced.

4. On the other hand, learned counsel for the present respondent strongly opposes the petition, taking me through the impugned order which narrates in detail the dilatory conduct on the part of the present petitioner.

5. The correctness of the circumstances as narrated in the impugned order has not been disputed by either side. It is on the basis of those circumstances of the case and conduct of the present petitioner that the learned trial court considered it fit not to extend any further indulgence to the present petitioner. It is informed by both sides that the learned trial court has been proceeding further with the suit and even final arguments have already been partly heard.

6. The circumstances of the suit are narrated in the impugned order as follows.

6.1 The present respondent is aged about 75 years and by way of order dated 27.10.2023, the learned trial court appointed a Local Commissioner for recording of evidence, but counsel for the present petitioner was not concluding cross examination of the present respondent across several opportunities, despite even extension of time granted by the learned trial court. It would be significant to note that the learned counsel for the present



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petitioner took a stand before the learned trial court that since the present petitioner was held up looking after his ailing wife, the learned counsel would not be able to conduct cross examination of the present respondent. It further appears that vide order dated 27.10.2023, the Local Commissioner was directed to record evidence with effect from 30.11.2023 and the suit was posted to 27.02.2024 for final arguments.

6.2 The Local Commissioner submitted his report before the learned trial court, observing that the present respondent was chief examined and partly cross examined on 30.11.2023, but on the next date i.e., 29.01.2024 at about 02:30pm, learned counsel for the present petitioner through email requested the Local Commissioner to change the time, so the matter was adjourned by the Local Commissioner to 02:30pm on 30.01.2024 to record further cross examination of the present respondent; that on 30.01.2024 at 02:30pm, the present respondent as well as his counsel were present before the Local Commissioner but the present petitioner and his counsel joined the proceedings at 03:10pm only; that on the next date i.e., 02.02.2024 the present respondent was partly cross examined and matter was adjourned by the Local Commissioner to 09.02.2024 for remaining cross examination of the present respondent, but on 09.02.2024, since the Local Commissioner was not available, the matter was adjourned by him with consent of both sides to 21.02.2024; that on 21.02.2024, despite the date having been fixed as per convenience of counsel for the present petitioner he did not appear and at about 02:39pm sent a text message on WhatsApp expressing his inability to join the proceedings.



6.3 Under those circumstances, the Local Commissioner submitted interim report on 27.02.2024 and the learned trial court granted extension of time to conclude the evidence.

6.4 The Local Commissioner fixed the matter for recording further cross examination of the present respondent on 22.03.2024, but on 21.03.2024, counsel for the present petitioner sent a WhatsApp message to the Local Commissioner expressing his non-availability due to family exigency; the Local Commissioner texted back that in view of the orders passed by the learned trial court, the matter could not be deferred; but despite that message of the Local Commissioner, the main counsel for the present petitioner did not join the proceedings on 22.03.2024, so the matter was adjourned to 28.03.2024 by the Local Commissioner. But on 27.03.2024, counsel for the present petitioner again sent a WhatsApp text that he intended to move an application seeking deferring of the evidence proceedings for 15 days, so the Local Commissioner should wait for outcome of that application. That application was dismissed by the learned trial court on 28.03.2024 in presence of learned counsel for the present petitioner but on the same day, the counsel for petitioner falsely stated before the Local Commissioner that he was not aware about the order passed by the learned trial court.

6.5 Even after dismissal of the said application, the present respondent was not cross examined by the learned counsel for petitioner on 28.03.2024. On 05.04.2024, at about 12:20pm learned counsel for the present petitioner sent a WhatsApp request for adjournment of 15 days, but at the time fixed



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on the same day (04:00pm), none appeared from the side of the present petitioner. On 15.04.2024, learned counsel for the present respondent informed on the WhatsApp group created by the Local Commissioner that the present respondent had moved an application for closing further cross examination of the present respondent but though there was no stay on Local Commissioner proceedings, counsel for the present petitioner opted not to appear for cross examination of the present respondent. On the next date, 24.04.2024, again none appeared from the side of the present petitioner to cross examine the present respondent. On the next date 02.05.2024, though learned counsel for the present petitioner appeared before the Local Commissioner but he refused to cross examine the present respondent, taking a plea that the present respondent should clarify as to whether the pending application for closure of cross examination would be pressed. It is going by the aforesaid that the learned trial court arrived at a conclusion that the present petitioner is interested only in delaying the matter. That is why further cross examination of the present respondent was closed by way of the impugned order.

7. It is in order to respond to the overflowing dockets of courts, especially the trial courts on civil side that the practice of getting recorded evidence through Local Commissioner was adopted by courts. Therefore, it is expected that counsel for both sides would ensure diligence. But in the present case, the above narrative shows that counsel for the present petitioner left no stone unturned to ensure that the matter even before the Local Commissioner keeps getting adjourned, so that the other side gets



frustrated. As narrated above, almost always, counsel for the present petitioner would somehow seek adjournment by way of text messages just a day or few hours before the commencement of proceedings before the Local Commissioner or would simply abstain from appearing.

8. Of course, right to cross examine a witness is a vital right, flowing out of principles of natural justice. But there has to be a limit to it, lest it becomes a serious violation of the rights of the other party. The above narration leaves no doubt that deliberate efforts were being made from the side of the present petitioner to somehow protract the proceedings as far as possible so that the present respondent aged about 75 years gives up in frustration.

9. I am unable to find any reasonable explanation for the repeated deliberate refusals on the part of the present petitioner to conclude cross examination of the present respondent.

10. In view of the aforesaid, I find no infirmity in the impugned order, so the same is upheld and the present petition as well as the pending applications are dismissed.

**GIRISH KATHPALIA
(JUDGE)**

SEPTEMBER 09, 2025/as