



2025:DHC:7107



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 19th August, 2025*

+ CM(M) 1427/2025 & CM APPL. 46903-46904/2025 & CM APPL. 47920-47922/2025

RAMESH YADAVPetitioner

Through: Mr. Chetanya Puri, Advocate.

versus

SUNITA YADAVRespondent

Through: Mr. Praveen Suri, Advocate.

CORAM:**HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)**

1. Petitioner, as defendant No. 1 before the learned Trial Court, is defending a suit for permanent and mandatory injunction.
2. The grievance raised in the present petition is with respect to two different orders.
3. The first order is dated 23.07.2025 whereby application moved by defendant No.1 under Order XVIII Rule 17 CPC has been dismissed. By virtue of the abovesaid application, defendant No.1 was seeking recall of plaintiff (PW-1 Sunita Yadav) on the ground that certain essential questions, which were relevant for the fair disposal of the suit, could not be put to her by the previous counsel.
4. The abovesaid application has been dismissed by the learned Trial Court, while also echoing the fact that a witness cannot be permitted to call again, merely because of the fact that there is a change in the counsel. It also noticed that the application was vague and did not contain material particulars and it was not, even, divulged as to what relevant questions had been left out and it was in the abovesaid premise that the learned Trial Court had dismissed



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the abovesaid application, subject to cost of Rs. 10,000/-.

5. After having heard the learned counsel for parties, and going through the impugned order, this Court does not find any element of illegality or perversity in the abovesaid order dated 23.07.2025. Rather, it is quite obvious that the exercise of jurisdiction, while disposing of the abovesaid application, is a judicious one.

6. This Court is not, therefore, inclined to interfere with the abovesaid order.

7. The second order is dated 26.07.2025.

8. Since cost of Rs.10,000/- remained unpaid, learned Trial Court relying on *Manohar Singh vs D. S. Sharma: (2010) 1 SCC 53* has precluded defendant No.1 from further participation in the suit and, resultantly, his defence evidence has also been closed.

9. Mr. Praveen Suri, learned counsel for respondent/plaintiff submits that the matter is being defended in a very casual manner by defendant No.1 and, therefore, only, the Court was constrained to take the abovesaid extreme step. However, he submits that he does not want any further delay in his suit and, therefore, he would have no objection if the present petition, so far as it relates to abovesaid order dated 26.07.2025, is allowed, subject to clearance of unpaid cost and subject to further imposition of cost.

10. It is also informed that the evidence was being recorded before the learned Commissioner appointed by the learned Trial Court and if the defendant wants to examine its witnesses before the learend Commissioner, ideally, he should bear further expenditure of such Commission.

11. The list of witnesses has already been submitted by defendant No.1 before the learned Trial Court.



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12. Keeping in mind the overall facts and circumstances of the case and also appreciating gracious concession given by learned Counsel for respondent/plaintiff, the present petition is disposed of with request to learned Trial Court to permit defendant No.1 to examine his witnesses. It will be entirely up to the learned Trial Court to give further suitable directions in this regard and if the witnesses were earlier being examined before learned Commissioner, the learned Trial Court would be at liberty to give directions with respect to the examination of the witnesses of defendant No.1, in the same and similar manner.

13. The next date before the learned Trial Court is stated to be 23.08.2025, and on that day, learned Trial Court shall fix up the date for the purposes of examination of the witnesses of defendant No.1 and would also finalize as to which witnesses need to be examined.

14. The abovesaid order, however, comes with a rider and the petitioner would not only clear the unpaid cost of Rs. 10,000 but is also burdened with additional cost of Rs. 10,000/- for causing delay in the matter.

15. Let the abovesaid total cost be paid to plaintiff before the learned Trial Court on the abovesaid date i.e. 23.08.2025.

16. Petition stands disposed of in aforesaid terms.

17. All pending applications also stand disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

AUGUST 19, 2025/sw/JS