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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 1097/2022 & CM APPL. 44800/2022, CM APPL.
44801/2022

SUNITA

..... Petitioner

Through: Mr. V.P. Rana and Ms. Jyoti
Nambiar, Advs.

versus

PREMWATI

..... Respondent

Through: Mr. N.C. Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER (O R A L)

27.10.2022

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1. This petition under Article 227 of the Constitution of India assails order dated 14th September 2022 passed by the learned Civil Judge in CS SCJ 307/17 (*Premwati v. Sunita*) to the extent it closed the right of the petitioner, as the defendant in the suit, to cross-examine PW-1. Mr. Rana submits that, on 14th September 2022, the application of the respondent—plaintiff under Order VII Rule 14 of the CPC was allowed, PW-1 was examined and cross-examination of PW-1 was commenced by learned Counsel for the petitioner at 3 p.m. He submits that learned Counsel for the petitioner cross-examined PW-1 for three hours till 6.10 p.m. and then sought an adjournment for further cross-examination which has been declined by the learned Civil Judge.

2. The impugned order reads thus:

“At 02 : 30 PM.

Present : Sh. Rajpal Gulia, ld. counsel for the plaintiff
alongwith plaintiff alongwith plaintiff.
Sh.Vinay Kumar Pathak, ld. counsel for the
defendant alongwith defendant.

It is 06:10 PM already and ld. counsel for the defendant seeks adjournment on the ground that another counsel who has to cross examine the witness has not appeared today. It is pertinent to mention that the evidence had started at 12 : 15 PM and the cross examination of PW1 was deferred at 1 PM. Thereafter, the evidence was resumed at 3 PM, and the plaintiff witness has been examined at length. The Court is not unmindful of the fact that the plaintiff is an 80 yrs old citizen and despite the time constrain, several irrelevant questions have already been asked. Furthermore, perusal of the case file reveals that Sh.Vinay Pathak, ld. counsel for the defendant has been appearing in the present matter on all the dates and another counsel Sh.V.P. Rana has appeared only twice in the span of last 3 yrs. In view of the same, adjournment is not granted.

PW1 examined, cross examined and discharged.

Put up for evidence of PW2 on 23.09.2022 at 02 : 15 PM.

(Bharti Beniwal)
Civil Judge- II, South West,
Dwarka Courts New Delhi
14.09.2022”

3. Given the fact that cross-examination of PW-1 commenced only at 12.15 p.m., the learned Civil Judge was, *prima facie*, not justified in rejecting the petitioner’s request for permission to continue cross-examination of PW-1 on the next date of hearing.

4. That apart, the factors which have made with the learned Civil Judge in refusing the petitioner’s request for further opportunity to

cross-examine PW-1, as reflected in the impugned order dated 14th September 2022, cannot be treated as relevant. All that the learned Civil Judge observes is that the plaintiff was 80 years of age and several irrelevant questions had been put to her.

5. While it is open to a Court to jettison irrelevant and immaterial questions, if asked by Counsel, nonetheless, save and except in the rarest of circumstances, the Court cannot compel a Counsel to conclude cross-examination on the very day when it starts.

6. In that view of the matter, I am of the opinion that, in the interests of justice, the petitioner ought to be allowed permission to continue cross-examination of PW-1 on the next date of hearing when the matter is listed before the learned Civil Judge. The petitioner is directed to endeavour and make all efforts to conclude the cross-examination of PW-1 on the said date. No adjournment would be granted to the petitioner in that regard.

7. The petition stands allowed in the aforesaid terms with no orders as to costs. Miscellaneous applications also stand disposed of.

C.HARI SHANKAR, J

OCTOBER 27, 2022/hk