

Thomson Press India Ltd vs Nanak Builders & Investors Pvt. Ltd. & ... on 27 February, 2020

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CM (M) 286/2018 & CM APPL. 46435/2019
+ CM (M) 289/2018 & CM APPL. 46442/2019

THOMSON PRESS INDIA LTD. Petitioner
Through: Mr. Sushil Dutt Salwan, Mr. Arjun
Garg and Mr. Subhoday Banerjee,
Advocates. (M:9910922635)
versus

NANAK BUILDERS & INVESTORS
PVT. LTD. & ORS. Respondents
Through: Mr. Bhagat Singh, Advocate for R-1.
(M:9810133410)

CORAM:
JUSTICE PRATHIBA M. SINGH
ORDER

% 27.02.2020 REVIEW PET. 445/2019 in CM (M) 286/2018 REVIEW PET. 446/2019 in CM (M) 289/2018

1. The present review petition has been file seeking review of order dated 16th September, 2019. At the outset, ld. Counsel for the Respondent No.1 submits that due to the fact that he was held up in another court on the said date he could not appear before this Court and assist the Court. Insofar as the grounds of non-service of Respondent No.2 as also the other ground in respect of the typographical error in paragraph 7 of the order is concerned the said grounds are not pressed. He, further submits insofar as the recall of witnesses are concerned, the impleadment of the Petitioner was permitted by the Supreme Court only in view of the doctrine of lis pendens and no fresh trial was permitted by the Supreme Court. Thus, the order dated 16 th September, 2019 permitting the recall of the witnesses deserves to be reviewed.

2. He further submits that subsequent to the impugned order dated 29th November, 2017 by which the permission to recall the witnesses was rejected and additional evidence was permitted by the Petitioner, the Petitioner has in fact accepted that order has also sought to lead additional evidence. Further, he urges that insofar as the handwriting expert is concerned, vide order dated 19th March, 2007, a ld. Single judge of this Court had permitted Defendant No.1 in the suit to lead the evidence of a handwriting expert. The Petitioner always had the liberty to cross-examine the said handwriting expert as is evident from the orders dated 30th May, 2007, 24th November, 2008, 25th October,

2013, 27th March, 2014 and 19th November, 2015. He submits that on the date when finally the handwriting expert was cross-examined and his cross-examination was concluded and he was discharged, ld. counsel for the Petitioner herein appeared only at 4:20 p.m. and did not choose to cross-examine the said expert at the time when the Plaintiff had cross-examined the said witness. Thus, today to allow the Petitioner to lead evidence of a handwriting expert would amount to putting the clock back by five years in terms of the progress in the suit. 3 The review applications have been heard in detail. The ground of concealment i.e., that the Supreme Court rejected the prayer for de novo trial and that fact was not brought to the notice of this Court, is not tenable. The main objection seems to be that the handwriting expert cannot be permitted at this stage, as at the time when the Defendant No.4's hand writing expert was being examined by the Court, the Petitioners were already impleaded as parties and they chose not to cross-examine the said expert. The scope of review is very limited. The intention of the Court in this case is to arrive at a conclusion as to whether the written statement of Late Lakhbir Sawhney has actually been signed by her. The case of the Petitioner is that her signatures in the written statement are forged and she has not signed the same. Considering the competing stands, the order dated 16th September, 2019 is modified to the extent that the handwriting expert would not be brought afresh by Defendant No.4, rather, the same handwriting expert of Defendant No.1 i.e. Mr. A. K. Gupta would be permitted to be cross- examined by the Defendant No. 4's counsel on a date to be fixed by the Trial Court. This would ensure that there is no further delay due to the evidence of a new handwriting expert being adduced. No further handwriting expert shall be permitted in this matter on behalf of Defendant No. 4.

4. Insofar as the cross-examination of the Plaintiff's witness is concerned, the same shall be restricted to the extent as was permitted by the Supreme Court while allowing the impleadment.

5. The order dated 16th September, 2019 is reviewed and modified to the above extent. No further orders are called for in these petitions. The review applications and the petitions are disposed of with these observations.

Dasti.

PRATHIBA M. SINGH, J.

FEBRUARY 27, 2020/dk