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

Date of decision:18.09.2023

\+ **CM(M) 1508/2023 & CM APPL. 47984/2023**

ANKITA SINGH ..... Petitioner

Through: Mr. Ankur Bhasin, Advocate

versus

RAMESH DEVI AND ANR. ..... Respondents

Through: None

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CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 47985/2023 *(for exemption)*

Exemption is allowed, subject to all just exceptions.

Accordingly, the present application is disposed of.

CM(M) 1508/2023

1. This petition filed under Article 227 of Constitution of India impugns the order dated 07.07.2023 passed by ADJ-02, North District, Rohini Courts, Delhi ('Trial Court') in CS DJ No. 59358/2016, dismissing the application filed by the Petitioner herein under Section 139 of the Indian Evidence Act, 1872 ('Evidence Act') read with Section 30 and 151 of the Code of Civil Procedure, 1908 ('CPC').

1.1 The Petitioner is defendant no.1; Respondent no.1 is plaintiff and Respondent no.2 is defendant no.2 in the civil suit.

1.2 The Petitioner is the daughter-in-law of Respondent No.1 and the wife of the Respondent No.2.

1.3 The civil suit has been filed by the Respondent No.1 i.e., the plaintiff, seeking a decree of possession, mesne profits and permanent injunction against both the Petitioner and Respondent No.2 with respect to the property bearing house no. 61, Hari Park, Mukundpur, Delhi – 110042 ('suit property').

2. The learned counsel for the Petitioner states that the said suit was listed by the Trial Court for final arguments on 14.02.2023 and it was at this stage in March, 2023 that he was engaged by the Petitioner to represent her.

2.1 He states that after perusing the record of the suit, he was of the opinion that the Respondent Nos. 1 and 2 herein are acting in collusion with each other in the suit proceedings.

2.2 He states that more specifically upon perusal of the details of the counsel for the Respondent No.1 herein, he realised that there is collusion in this matter, inasmuch as the said counsel for the Respondent No.1 also filed the divorce petition on behalf of the Respondent No.2 against the Petitioner.

2.3 He states that Respondent No.1 and Respondent No.2 have colluded with each other, since the Respondent No.1 has filed the present civil suit for possession against both the Petitioner herein and Respondent No.2 on incorrect averments.

2.4 He states that it was in these facts and circumstances that he advised the Petitioner to file the application dated 23.04.2023 under Section 139 of the Evidence Act read with Section 30 and 151 of CPC, seeking directions to Deputy Commissioner of Police, North West, Ashok Vihar, New Delhi, to preserve and submit before the Trial Court, the mobile locations of

Respondent Nos.1 and 2 herein for the period between 24.11.2022 to 23.04.2023 from 02:00 AM to 05:00 AM.

2.5 He states that since by way of this application, the Petitioner was merely seeking summoning of the said record, no cross-examination of the police officer was required under Section 139 of the Evidence Act and therefore, no prejudice or delay would have been caused in the trial as the said documents have to be simply taken on record.

2.6 He states that the Trial Court has sufficient jurisdiction under Section 30 of CPC to even otherwise call for the information which the Petitioner herein is seeking by the application filed in April, 2023.

2.7 He states that in view of the assertion of the Petitioner that there is a collusion between Respondent No.1 and Respondent No.2, the safeguards contemplated in the judgment of Coordinate Bench of this Court in ***Vinay Verma Vs. Kanika Pasricha and Anr., 2019 SCC OnLine Del 11530,*** are squarely attracted to this case.

2.8 He further states that the matter is listed today only i.e., on 18.09.2023, before the Trial Court for final arguments and he therefore, seeks a stay of the trial.

3. This Court has considered the submissions of the counsel for the Petitioner and perused the record.

4. The suit was filed in November, 2015. The plaintiff's evidence (i.e., Respondent No.1) in this matter commenced on 28.11.2016. The defendant no.1's (i.e., the Petitioner) evidence stood concluded on 05.07.2022. The Petitioner herein therefore, has sufficient time since 2015 to collate and produce before the Court all evidences in support of her defence raised in the written statement. There is no averment that there was any denial of

opportunity to the Petitioner to lead evidence.

4.1 The matter was listed before the Trial Court for final arguments on 14.02.2023 and was thereafter adjourned at the request of the present newly engaged counsel for the Petitioner herein on 07.03.2023, 10.04.2023 and 24.04.2023. It was at this belated stage that the Petitioner herein filed this application seeking summoning of mobile records of the Respondents from the Deputy Commissioner of Police. The Trial Court by the impugned order dismissed this application and held as under:

> *"7. Perusal of the record of the case reveals that the present suit for possession, damages, mesne profits and permanent injunction has been instituted by the plaintiff Smt. Ramesh Devi against her daughter in law Smt. Ankita(defendant no. 1 herein) and her son Sh. Parmeet Kumar(defendant no. 2 herein). After the conclusion of the evidence, the matter was fixed for final arguments on 14.02.2023. On 14.02.2023, the matter was adjourned for final arguments at the request of Id. proxy counsel for the defendant no. 1 and the next date of hearing was 07.03.2023. On 07.03.2023 as well, the matter was adjourned to 10.04.2023, at the request of the Id. counsel for the defendant no. 1 and on that day, Mr. Ankur Bhasin who is the counsel for the defendant no. 1 as on date, had appeared before the court online on Cisco Webex. On 10.04.2023, Ld. counsel for the defendant no. 1 again sought the adjournment on the ground that certified copies were not made available to defendant no.1 and the matter was adjourned to 24.04.2023. On 24.04.2023, ld. Counsel for the defendant no. 1 preferred to file on record the above said application u/s 139 of the Indian Evidence Act.*
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> *8. Now, the chronology of the above said events brings forth the point that the above said application was filed by the defendant no. 1 only on 24.04.2023 after seeking repeated adjournments for final arguments.* ***A perusal of the above said application reveals that the only ground which has been stated in the said application is that Mr. Ankur Bhasin was recently engaged in the present matter by the defendant no. 1 as her advocate and that the previous advocate has committed serious omissions.*** *It has been further alleged that there has been a serious collusion in between the plaintiff and the defendant no. 2.*
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> *9. It has to be seen that the present suit is a civil matter which has to be decided on the basis of Preponderance of Probabilities. Ld.*

*counsel for the defendant no. 1, by way of the present application, wants that DCP be directed to obtain the mobile locations of the plaintiff and defendant no. 2 w.e.f. 24.11.2022 to 23.04.2023**. I am of the opinion that change of advocate is no ground for filing an application at such a belated stage when the matter was being constantly fixed for final arguments and that too, at the request of the ld. counsel for the defendant no. 1, including Mr. Ankur Bhasin who is presently representing defendant no. 1. It has to be further seen that the defendant no. 1 has already led her evidence and if there is any collusion in between the plaintiff and the defendant no. 2, the same has to be proved on record by way of evidence.** To my mind, no ground is made out for allowing the above said application at this stage. Accordingly, the present application filed by the defendant no. 1 u/s 139 of the Indian Evidence Act is hereby dismissed."*

(Emphasis Supplied)

5. In the opinion of this court there is no error in the order of the Trial Court. The parties have led their evidence in support of their respective pleas and the collusion if any between the Respondent No.1 and Respondent No.2 would be assessed by the Trial Court on the basis of the record and after appraising the evidence led by the parties.

6. The submissions of the counsel for the Petitioner that no prejudice would be caused since the mobile records if summoned from the Deputy Commissioner of Police have to be merely taken on record and cannot be made subject to any further cross-examination is incorrect and untenable in law.

6.1 The admissibility of record of the mobile locations provided by the Mobile Service Provider would be subject to proof in accordance with Section 65(B) of the Evidence Act and the concerned officers of the Mobile Service Provider, who download the said reports and provide to the Police would have to step into the witness box to prove the said documents in accordance with law. An opportunity would also be granted to the

Respondent No. 1 and Respondent No.2 to cross-examine the said officers/witnesses, if asked for. In this regard, it would be instructive to refer to the judgment in ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Ors., (2020) 7 SCC 1***, wherein the Supreme Court has explained how electronic records have to be proved:

> "*32. Coming back to Section 65-B of the Evidence Act, sub-section (1) needs to be analysed. The sub-section begins with a non obstante clause, and then goes on to mention information contained in an electronic record produced by a computer, which is, by a deeming fiction, then made a* ***"document"****. This deeming fiction only takes effect if the further conditions mentioned in the section are satisfied in relation to both the information and the computer in question; and if such conditions are met, the "document" shall then be admissible in any proceedings. The words "... without further proof or production of the original ... " make it clear that once the deeming fiction is given effect by the fulfilment of the conditions mentioned in the section, the "deemed document" now becomes admissible in evidence without further proof or production of the original as evidence of any contents of the original, or of any fact stated therein of which direct evidence would be admissible.*
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> *33.* ***The non obstante clause in sub-section (1) makes it clear that when it comes to information contained in an electronic record, admissibility and proof thereof must follow the drill of Section 65-B, which is a special provision in this behalf*** *- Sections 62 to 65 being irrelevant for this purpose. However, Section 65-B(1) clearly differentiates between the "original" document - which would be the original "electronic record" contained in the "computer" in which the original information is first stored - and the computer output containing such information, which then may be treated as evidence of the contents of the "original" document. All this necessarily shows that Section 65-B differentiates between the original information contained in the "computer" itself and copies made therefrom -* ***the former being primary evidence, and the latter being secondary evidence****.*
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> *34. Quite obviously, the requisite certificate in sub-section (4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, a computer tablet or even a mobile phone,* ***by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where "the computer", as defined, happens to be a part of a "computer system" or "computer network" (as defined in the Information Technology Act, 2000) and it becomes***

> ***impossible to physically bring such network or system to the court, then the only means of proving information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4)****. This being the case, it is necessary to clarify what is contained in the last sentence in para 24 of Anvar P. V.2 which reads as " ... if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act ... ". This may more appropriately be read without the words "under Section 62 if the Evidence Act,…". With this minor clarification, the law stated in para 24 of Anvar P.V. does not need to be revisited*"

(Emphasis Supplied)

6.2 Thus, the submission of the counsel of the Petitioner that mobile location records produced by Deputy Commissioner of Police are not subject to further proof in accordance with law under Section 139 of the Evidence Act is misconceived.

6.3 This Court is unable to accept that under Section 30 of CPC, the Civil Court must embark upon an enquiry of summoning the mobile locations records of the parties in a routine manner as sought by the Petitioner herein and that to at the stage of final hearing. The summoning of Call Detail Records ('CDR') of a person is governed by prescribed procedures governing protection of privacy of party and the same cannot be summoned in a routine or casual manner as is sought to be done by the Petitioner in these proceedings. In a civil trial, the Court does not gather evidence on behalf of the parties and it is for the parties to lead evidence in support of their respective pleas. The Petitioner herein has had sufficient opportunity since 04.09.2018 to 05.07.2022 to lead evidence on the alleged collusion between the Respondent Nos. 1 and 2. The present application filed at the stage of final arguments is not maintainable and is without any merit.

7. In this background, the submission of the counsel for the Petitioner that the said application could have been maintained, at the stage, when the

matter was listed for final arguments merely because of the opinion of the change of the counsel is misconceived. The Trial Court is right in holding that a mere change of a counsel is not a ground, much less a sufficient ground, for moving an application for summoning evidence of mobile locations at the stage when the matter is listed for final arguments.

8. With the respect of the contention of the counsel for the Petitioner that the collusion between the Respondent No.1 and Respondent No.2 is writ large because of the commonality of the counsel who filed the civil suit and the divorce petition is a fact, which in opinion of this Court may be raised in the course of arguments for the consideration of the Trial Court at the time of the final adjudication.

8.1 For the same reason, the ratio of the judgment of this Court in ***Vinay Verma*** (Supra) would also have to be considered by the Trial Court while determining the final relief, if any, to which the Respondent No.1 would be entitled to in the suit. The said judgment has no relevance for deciding the application under consideration filed by the Petitioner. The reliance placed on the said judgment for maintaining the application under consideration is not discernible at the stage of the final arguments.

8.2 All objections of the Petitioner on the merits of the relief sought by the Respondent No.1 have to be considered at the stage of the final arguments and the suit cannot interdicted in this manner.

9. At this stage, learned counsel for the Petitioner has also relied upon a reference made by a Coordinate Bench of this Court to the larger bench on 01.06.2023 in CS (OS) 601/2022, titled as ***"Geeta Anand vs. Tanya Arjun & Anr."***

9.1 To a query raised by this Court, the counsel for the Petitioner states

that he has not raised any objection to the jurisdiction of the Trial court in terms of the said order of reference dated 01.06.2023. He fairly admits that this issue has not been raised before the Trial Court, since he himself became aware of the said order recently.

9.2 Thus, the said objection to jurisdiction cannot be raised as a ground of challenge in this petition. The objection to the jurisdiction of the Trial Court to hear the civil suit is not an issue arising in this petition.

10. In the aforesaid facts, this petition clearly appears to be an attempt to impede the final adjudication in the matter. The impugned order was passed on 07.07.2023, however this petition was filed on 18.09.2023 on the date when the matter is listed before the Trial Court for final arguments.

11. Accordingly, this Court finds no merits in this petition and the same is accordingly dismissed. Pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 18, 2023/*rk/aa*