

\$~22 (Appellate)

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

+ CM(M) 751/2019 & CM APPL. 23028/2019

USHA MANN Petitioner

Through: Mr. Rajiv Bahl, Adv.

versus

RAJIV VAID & ORS Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGEMENT (ORAL)

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18.05.2022

1. There are three respondents in this matter. Respondents 2 and 3 have apparently been impleaded because they were parties in CS No. 95533/2016 (*Rajiv Vaid v. H. P. Vaid & Ors.*). They have actually nothing to do with the controversy in issue.

2. The impugned order dated 3rd November, 2018, passed by the learned Civil Judge, reads thus:

“CS No. 95533/16
Rajiv Vaid Vs. H.P. Vaid &Ors.

03.11.2018

Present:- Sh. K.S. Pathania, Ld. Counsel for plaintiff
alongwith plaintiff in person.

Ms. Usha Maan, defendant no. 2 in person.

Sh. Rajiv Vaid, PW-1 in person.

Matter is fixed for cross-examination of PW1 for today.
PW-1 has been cross-examined by defendant no. 2 and after

conclusion of cross-examination of PW-1, PW-1 is discharged. The counsel for the plaintiff has submitted that PW- 2 was examined in chief on 02.03.2016 and he is to be cross examined on behalf of the defendants.

At this stage, this court deems fit to note down that defendant no. 2 is a lawyer by profession and she was conducting her case by herself on the last date of hearing it was already noted that cross-examination of PW-1 took several dates and the court is constrained to observe that irrelevant questions were asked by defendant no. 2 to PW-1. Since defendant no. 2 who is a counsel and the party in the present case, this court advise defendant no. 2 not to personally conduct the present case since her personal interest is involved in the present case. Accordingly, defendant no. 2 is advised to engage a counsel on the next date of hearing *otherwise she will not be allowed to conduct the further proceedings by herself.*

Cost of Rs. 1000/- stands paid by the plaintiff to the defendant in terms of order dated 04.08.2018.

Now put up for cross-examination of PW-2 on 28.02.2019.”

(Emphasis supplied)

3. To my mind, such an order is completely untenable in law and borders on perversity.
4. The court, especially when functioning under the provisions of the Code of Civil Procedure, 1908, cannot deny any party, in any proceeding, the right to represent her or his cause herself or himself.
5. The learned Civil Judge, by directing that, in case the petitioner would not engage a counsel, she would not be permitted to conduct the further proceedings by herself, has clearly transgressed the legitimate bounds of his authority.

6. The petitioner is a counsel. She is Defendant 2 in the proceedings before the learned Civil Judge. If she desires to conduct her proceedings herself, the court has no right to stop her from doing so. In case the court finds that the manner in which she is conducting the proceedings is objectionable, the actions which legitimately may be taken by the court lie elsewhere. The court is not empowered to pass an order saying that if she does not engage a counsel, she would not be permitted to represent her case.

7. The impugned order is completely unsustainable in law. It is accordingly quashed and set aside.

8. The petition is allowed.

MAY 18, 2022

dsn

C. HARI SHANKAR, J.

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