

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

% *Order delivered on: 17th July, 2013*

+ **C.R.P. No.26/2012 & C.M. No.7151/2013**

YOGESH KUMAR SHARMA Petitioner
Through Mr. Jawahar Chawla, Adv. with Ms. Shalu
Chawla, Adv.

versus

SMT. VEENA & ORS. Respondents
Through None

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The present petition under Section 115 read with 151 CPC is filed by the petitioner (plaintiff) for quashing the order dated January 2, 2012 passed by the leaned trial court dismissing the application of the petitioner under Section 151 CPC read with Order 18 Rule 17 CPC wherein the petitioner sought the prayer for recall of order dated 20th February, 2006 whereby the evidence of PW-1 was closed despite of last and final opportunity granted to the petitioner No.2. PW-2 was examined by the petitioner later on who was cross-examined and discharged. The application for recalling of order dated 20th February, 2006 was filed on 12th August, 2011 after more than five and half years.

2. The present petition arose from a suit filed by the petitioner against the respondents (defendants) who are the sister-in-law (respondent no.1),

brother (respondent no.2), Nephew (respondent no.3), Niece (respondent no.4) and Mother (respondent no.5) of the petitioner, respectively.

3. The suit is for permanent and mandatory injunction filed against the respondents in respect of the suit property bearing No. 556/37, Onkar Nagar-B, Tri Nagar, Delhi-110035 of which the petitioner and his wife are the owners since January 2001 after having purchased the same from one Mr. Bhoo Dev Singh.

4. The said suit was filed on June 19, 2004 whereby the petitioner contended that the respondents were occupying forcibly, illegally and unauthorisedly some portion of the suit property against the consent and wishes of the petitioner and his wife and were hence liable to pay damages for use and occupation thereof.

5. In the said suit, which is still pending before the trial court, the defence of the respondents was struck down by order dated August 9, 2005 and the matter was posted for petitioner's evidence. The petitioner's evidence was filed on October 14, 2005.

6. It is contended in the present petition that in the absence of the counsels for the parties, the trial court vide order dated January 18, 2006 adjourned the matter to February 20, 2006 for cross-examination of PW-1, despite the fact that the respondent's defence was struck off and there was no written statement on record. It is contended that the counsel for the petitioner was not aware of the passing of the said order.

7. It is contended that on February 20, 2006, again in the absence of the counsel or the parties, the petitioner's evidence was closed and the matter was posted for final arguments on May 2, 2006. However on this day the

matter was ordered to be put up with the other connected matters between the parties in respect of the same suit property.

8. In their reply to the present petition, the respondents have contended that the application of the petitioner under Order 18 Rule 17 CPC which was dismissed by the impugned order was filed after a lapse of 5 and 1/2 years delay and the same was dismissed on ground of limitation only. Further it is contended that the petitioner's evidence was closed by order dated February 20, 2006 in presence of the proxy counsel for the petitioner. Hence they contend that petition is not maintainable.

9. In the present case, admittedly after passing the order dated 20th February, 2006, petitioner's counsel has been appearing before court many times and even PW-2 was later on examined and cross-examined. Nobody has prevented him to file the application for re-calling of order dated 20th February, 2006. The petitioner had filed the application under Order 18 Rule 17 CPC without the application for condonation of delay. Mr. Jawahar Chawla, learned counsel appearing on behalf of petitioner now stated that the petitioner was not aware about the passing of order dated 20th February, 2006. It is unbelievable and afterthought on the face of record.

10. Thus, the petition under Article 227 is not maintainable as the impugned order does not suffer from any infirmity. The petition is accordingly dismissed. Pending application is also disposed of.

(MANMOHAN SINGH)
JUDGE

JULY 17, 2013