

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

% *Order delivered on: 30th July, 2013*

+ **C.R.P. No.69/2013**

BANSI LAL AND ORS. Petitioners

Through Mr. Dalip Singh, Adv. for
Mr. Pramod Nagar, Adv.

versus

KAMLA AND ORS. Respondents

Through None

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By way of the present petition under Section 115 read with section 151 CPC, the petitioners have assailed the order dated 11th December, 2012 whereby the application of the petitioners seeking permission to lead evidence was dismissed with costs.

2. The respondents had filed a suit for eviction and possession against the petitioners. It is the case of the petitioners that petitioners i.e. the brothers of the husband of the respondent No.1 after the death of the husband of respondent No.1 in January, 1989, requested respondent No.1 to allow them to stay in the house bearing No. C-422, Gokalpuri, J.J. Colony, Delhi which was allotted to the husband of respondent No.1 under a scheme of DDA and on which he constructed the ground, first and second floor. Since then the petitioners No. 1 & 3 are staying on the

3

first floor, while petitioner No.2 is residing at the second floor of the said property.

3. In the course of the proceedings in the said matter, after the completion of evidence of the respondent, the petitioners/defendants wanted to lead defence evidence. Vide order dated 28th July, 2012 notice in the application seeking permission to lead defence evidence and to take list of witnesses on record was issued. However, on 11th December, 2012, when the matter was listed for arguments, the learned trial court dismissed the said application with the observations that an application under Order 16 Rule 1 read with Section 151 CPC was earlier filed by the petitioners/defendants with the same prayer and the same was dismissed as withdrawn vide order dated 12th March, 2012.

4. Subsequent thereto, another application with the same prayer was preferred by the petitioner which came to be dismissed by order dated 13th April, 2012.

5. The petitioners thereafter filed another petition under Order 47 read with Section 151 CPC for review which was also dismissed as withdrawn on 28th July, 2012.

6. It is not denied by the petitioners' counsel that the petitioners had already been examined in evidence and sufficient opportunities had been granted.

7. The matter came to be listed on 3rd September, 2010 but no steps were taken by the petitioners, it was only after about one year that a list of witnesses by the petitioners/defendants was filed on 21st November, 2011 with the application under Order 16 Rule 1 CPC and the same was dismissed with costs.

4

8. It is contended by the counsel that on 12th March, 2012, when the Court was considering the application seeking permission to file the list of witnesses, on the suggestion of the Court itself, the petitioners moved another application with the list of witnesses justifying the examination of the proposed witnesses, that the said application was withdrawn and on 13th April, 2012 when the court was considering the application of list of witnesses, the Court was not satisfied with the justification in the application of having mentioned those witnesses, and the Court closed the defence evidence.

9. It is not denied by the counsel for the petitioners that his client has already cross-examined on 12th March, 2012. By virtue of fresh application he wanted to produce further evidence and list of witnesses in that respect was filed. Earlier application for similar relief was dismissed as admitted by the counsel who has also not denied that his client has also withdrawn the review petition.

10. In view of above said facts, the present revision petition is not maintainable, the same is false and frivolous and has been filed in order to delay the proceeding of the Court. The petition is accordingly dismissed.


(MANMOHAN SINGH)
JUDGE

JULY 30, 2013