

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

% *Judgment delivered on: 22nd July, 2013*

+ **CM(M) No.717/2013 & C.M. No.10939/2013**

SMT DHANWANTI & ANR Petitioners

Through Mr. M.C. Sharma, proxy counsel for
Mr. J.S. Arya, Adv.

versus

ANJU Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

CM No.10940/2013 (Exemption)

Exemption allowed, subject to just exceptions.

The application is disposed of.

CM(M) No.717/2013 & C.M. No.10939/2013 (Stay)

1. This petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 6th April, 2013 passed by the learned Civil Judge, Tis Hazari Courts, Delhi in a civil suit filed by the respondent (plaintiff therein) for declaration and permanent injunction against the petitioners (defendants therein) claiming herself to be the owner of the ground floor and one room (front side) at the first floor of the property bearing No. H-366, Shakurpur, JJ Colony, Delhi-110034.

2. Pursuant to the filing of the written statement, the respondent was directed repeatedly by the court to furnish original documents but he failed to do so. Thereafter the petitioners preferred an application under Order 7

Rule 11 read with Section 151 CPC for rejection of the plaint being not maintainable.

3. Subsequently a preliminary issue of whether the suit is maintainable in its present form was framed. On 19th October, 2012 when the matter was fixed for orders on preliminary issue, the Court on perusal of records came to know that the respondent had not mentioned the suit valuation and court fees in the relevant para of the plaint. He was thereby directed to assess the valuation of the suit as well as the court fee and also file the requisite court fee accordingly, within 30 days of the order failing which the suit shall be deemed to be rejected under Order 7 Rule 11 CPC.

4. The respondent failed to comply with the aforesaid direction and so the suit was rejected accordingly on 11th December, 2012 and a decree sheet was ordered to be prepared. However on the same day, the respondent moved an application under Order 7 Rule 11 read with Section 151 CPC for setting aside the rejection order along with the requisite court fee and amended suit. The application was allowed by order dated 6th April, 2013 for the reasons set out in the order and the order dated 11th December, 2012 was set aside.

5. Assailing the impugned order dated 6th April, 2013, the present petition is filed on the ground that the said order is illegal, perverse and bad in the eyes of law and therefore not sustainable.

6. It is not in dispute that on perusal, it was later on found that respondent, in fact, purchased the court fees on 26th November, 2012 but plaintiff/respondent herein did not move any application seeking extension of time to file the same on 26th November, 2012 in the court when the order of rejection was passed. However, the same was filed on that day at 4.00 pm. Considering the peculiar facts of the matter, the application filed by the

respondent was allowed as the court felt that due to mistake, a party should not suffer and the order dated 11th December, 2012 was recalled/set aside.

7. The said order has been challenged by the petitioner which according to the considered opinion of this court is fair and reasonable.

8. Thus, there is no merit in the petition and the same is dismissed. Pending application also stands disposed of.

(MANMOHAN SINGH)
JUDGE

JULY 22, 2013