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

+ IPA 17/2010 and I.A. 14927/2015, 12997/2010, 3012/2011
RAMESH RAJ GUPTA Petitioner

Through: Mr. B.S. Rajesh Agrajit, Advocate

versus

UNION OF INDIA AND ORS Respondents
Through: Mr. A.S. Dateer, Advocate for R-1
and R-2.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

% **ORDER**
11.08.2015

1. The petitioner had filed the present petition as an indigent person in May, 2010 praying inter alia for recovery of a sum of ₹15 crores as damages against the defendants.

2. Notice was issued on the petition on 19.07.2010, returnable before the Joint Registrar on 09.01.2010, who was directed to conduct enquiry in terms of Order XXXIII Rule 1A CPC as to the indigency of the petitioner. Thereafter, appearance was entered on behalf of the respondents and the case was adjourned by the Joint Registrar for the petitioner's examination under Order XXXIII CPC. On 14.03.2012, it

was noticed that the report of the SDM with regard to the petitioner's financial status had not been received. Notice was once again directed to be issued to the SDM for submitting a report within three weeks and the case was directed to be placed before the Joint Registrar on 02.05.2015, for the examination of the petitioner under Order XXXIII CPC.

3. The records reveal that the petitioner had failed to file the process fee for notice to be issued to the SDM, on several dates. On 05.04.2013, counsel for the petitioner had stated that he would take steps within two weeks so that notice could be issued to the SDM. On the same date, Mr. Dateer, learned counsel for the respondents No.1 and 2 had stated that the respondent No.3, who has been impleaded by the petitioner by name, had retired from the service of the respondent no. 2 before the present petition was filed and the petitioner had to take steps to serve her personally in the case. Directions were issued to the petitioner to file the process fee for effecting service on the respondent No.3 returnable on the next date of hearing. The petitioner was also directed to take steps so that notice could be issued to the SDM of the area.

4. On 14.03.2014, it was recorded that the process issued against the respondent No.3 was received back with the report that she had

left the given address. The petitioner was again directed to obtain the current fresh address of the respondent No.3 for notice to be issued to her on filing process fee etc. As it was noted that the status report had not been filed by the SDM, fresh notice was directed to be issued to the SDM and the case was renotified to 29.08.2014.

5. The records reveal that from 14.03.2014 onwards, the petitioner has failed to take any steps for effecting service on the respondent No.3 and for taking steps to obtain a report from the concerned SDM in respect of his financial status. Finally, vide order dated 27.04.2015, the Joint Registrar directed that the case to be placed before the Court on account of non-prosecution by the petitioner.

5. On 24.07.2015, as lawyers were abstaining from appearing in Court, the case was adjourned to 11.08.2015, i.e., today. In the meantime, the petitioner has filed I.A.14927/2015, for seeking substituted service on the respondent No.3 on the ground that she is avoiding service.

6. The averments made in the application to the effect that the respondent No.3 is avoiding service in the suit are not borne out from the record for the reason that the petitioner has yet to furnish her fresh address for service to be effected on her in ordinary course. It is also apparent from a perusal of the memo of parties that the petitioner

has elected to implead the respondent No.3 in her personal capacity and not as an officer of the respondent No.2/Northern Railways. In those circumstances, the onus is on the petitioner to furnish the address of the respondent No.3.

7. There is nothing on record to substantiate the submission made by the counsel for the petitioner that the respondent No.3 is evading appearance in the suit as has been alleged in the application. The Court is not satisfied with the grounds taken in the application for permitting service on the respondent No.3 through substituted mode. Quite apparently the application has been filed by the petitioner without satisfactorily demonstrating the efforts made by him to verify the correct address of the respondent no. 3 and the explanation offered in the application is quite flimsy. The prayer made in the application is rejected and the application is dismissed.

8. That apart, the petitioner has not taken any steps to file the process fee for effecting service on the SDM concerned so that a report with regard to his financial status can be brought on record.

9. In view of the casual and indifferent manner in which the petitioner has been prosecuting the present petition for the past five years, this Court is of the opinion that he does not deserve any further

indulgence. Accordingly, the present petition is dismissed for non-prosecution alongwith the pending applications.

AUGUST 11, 2015
rkb/ap

HIMA KOHLI, J