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

+ RFA 411/2015 and CM No.11212/2015 (stay)

SARJEEVAN BHATIA Appellant
Through: Mr. Dinesh Kumar Gupta and Mr. Vidit
Gupta, Advocate

versus

OM PRAKASH BHATIA Respondent
Through: Mr. Pawan Bahl and Mr. Pankaj Singhal,
Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **02.09.2015**

1. This appeal is directed against the judgment and decree dated 21.05.2015. The impugned judgment and decree has been passed, based on the trial court exercising suo motu powers under Order 12 Rule 6 of the CPC.

1.1 While no fault can be found in the exercise of such power, what requires to be seen is whether any triable issue, arose in this case.

2. As noted by me, in the order dated 01.07.2015, the appellant herein has undoubtedly taken pleas which, prima facie, appear to be both dishonest and self-destructive. However, the appellant seeks a trial in respect of the defence raised in the suit, notwithstanding the fact that they are nebulous, to say the least.

3. I may only note that, the respondent / plaintiff filed a suit for possession and mesne profit vis-a-vis a property, which is, merely 5 sq. yds.

3.1 In defence of the suit, the appellant / defendant has taken three distinct pleas, which the trial court noted were self destructive.

3.2 First, that he was a tenant in the suit property till February, 1988. Second, that the suit property though, bought in the name of the respondent / plaintiff vide registered sale deed dated 23.11.1995 had been financed by the appellant / defendant. Third, that the appellant/defendant was in adverse possession of the suit property.

3.3 Admittedly, there has been no challenge made to the sale deed by the appellant / defendant.

3.4 The learned counsel for the appellant / defendant, however, says that though the pleas are inconsistent, the appellant / defendant is entitled to a trial in the matter.

3.5 In support of his pleas, the learned counsel seeks to rely upon the following judgments. ***Charanjit Singh vs Kehar Singh 2006 (90) DRJ 268 (DB); Rajeev Mehra vs Sudhir Kumar Sachdev 2009 (109) DRJ 84; Dababhan Shankar vs Mohanlal Kanhyalal 2003 [105(1)] Bom. LR 676; Mudra Salt and Chemical Industries vs The Collector, Distt. Thane & Ors. 2001 (4) Bom. LR 534.***

4. Mr. Behl, on the other hand, says that in order to obviate further delay in the prosecution of the suit, his client is agreeable to the impugned judgment being recalled and the matter being put to trial.

5. Mr. Gupta, the learned counsel for the appellant / defendant, in response submits, that he would have no difficulty if, this court were to direct the trial court to complete the trial within a given time frame.

6. Accordingly, the appeal is disposed of, with the following directions :

- (i). The impugned judgment dated 21.05.2015, is set aside.
- (ii). Since, the pleadings are complete, parties will appear before the trial court on 17.09.2015, for framing of additional issues.

(iii). Since, I am informed by the counsel for both parties that they will not cite more than three (3) witnesses each, the counsels, will carry affidavits of evidence of their respective witnesses, which would be filed with the trial court on 17.09.2015. In case any witness is to be summoned, an appropriate application will be moved in that behalf before the trial court, on the given date.

(iv). On that very date, the trial court will fix a date in the matter for cross-examination of the respondent's/ plaintiff's witnesses. The date fixed will not exceed a time frame of four (4) weeks. Immediately upon cross-examination of the respondent's / plaintiff's witnesses, the appellants / defendants witnesses will be examined.

(v). The trial court will conclude the recording of the evidence and thereafter proceed to deliver judgment on or before 31.12.2015.

5. Mr. Gupta assures the court that no adjournment except for reasons beyond his control will be sought in the matter. Mr. Behl also assures the court that no adjournment will be sought on behalf of the respondent / plaintiff.

6. The trial court will ensure that the counsels adhere to the time line set out above. If, unnecessary adjournments are sought or if time line is not adhered to, the trial court will pass appropriate orders in the suit.

7. The appeal and the pending application are disposed of, in the aforementioned terms.

RAJIV SHAKDHER, J

SEPTEMBER 02, 2015

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