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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: September 23, 2015

Judgment Delivered on: October 01, 2015

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CM(M) 709/2015

M/S MODERN LAMINATORS PVT LTD

..... Petitioner

Through: Mr.Sunil Jain and Mr.Aashish Jain,
Advocates.

versus

M/S HANUMAN HOSIERY MILLS

..... Respondent

Through: Mr.B.K.Sood, Advocate with
Mr.Gaurav Garg, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

CM(M) No.709/2015

1. The petitioner before this Court is defendant in Civil Suit No.32/13 which has been filed by the respondent herein claiming the relief of possession and mesne profit. The petitioner is aggrieved by the order dated 30th June, 2015 whereby by a common order the three applications filed by the present petitioner have been dismissed.

2. The details of three applications filed by the petitioner before the learned Trial Court are contained in para no.1 of the impugned order which reads as under:-

“(i) Application whereby list of witnesses was sought to be placed on record. This application was moved on 12.08.2014

once PE was concluded and the matter was posted for defence evidence.

(ii) Second application u/s 151 CPC for tendering the evidence of the defendants alongwith giving exhibit marks to the documents – whose cross-examination has been recorded by the Ld. Local Commissioner appointed by this Court [I have quoted the heading of the application as it is]. This application is dt. 20.12.2014.

(iii) Third application is u/s 151 CPC praying therein that the the plaintiff should not disturb and create any hindrance to the defendants from accessing the passage to the factory. This application is also dated 20.12.2014.”

3. The application for placing on record the list of witnesses at the belated state i.e. D.E., has been dismissed noting the past conduct of the petitioner as well the order by this Court in CM(M) 644/2014 wherein, observing the manner in which the process of law has been abused by the petitioner, the petition was dismissed with costs of ₹50,000/- to be deposited with Delhi High Court Legal Services Committee.

4. The application for filing list of witnesses has been dismissed for the following reasons:-

(i) List of witnesses now sought to be produced at the stage of defence evidence should have been filed not later than 15 days from the date of issues were settled.

(ii) The issues were settled on 25th July, 2013, even at the stage of plaintiff's evidence no such list was filed and no explanation has been given for belatedly filing the list of witnesses.

(iii) The list of witnesses sought to be filed at the belated stage cited various officials from the Office of SDM Kanjawala, Official from DDA, Bank Officials, Official from House Tax Department, Official from

Licensing Department, Sub Registrar, Income Tax Department and MTNL without disclosing their relevance to decide the said matter.

(iv) The petitioner was inducted as tenant by Shri Gokul Chand Goel, sole proprietor of M/s Hanuman Hosiery Mills. After the death of sole proprietor, his legal heirs with a view to carry on the business under the same trade name i.e. M/s Hanuman Hosiery Mills formed a partnership firm. Since wife of late Shri Gokul Chand Goel relinquished her share in favour of her three sons who formed a partnership concern, they have stepped into shoes of Gokul Chand Goel/assumed the mantle of landlord and filed the suit for ejectment.

5. The plea taken by the petitioner/defendant in para 7 of the written statement reads as under:-

“7.In brief, it is submitted that late Sh.Gokul Chand Goel was running a proprietorship form in the name & style of M/s. Hanuman Hosiery Mulls and he was owner of the suit property and way back in the year 1975, he leased out the suit property to the defendants after receiving a sum of ₹2 lacs as security amount. It is further submitted that after the death of Sh.Gokul Chand Goel, the said proprietorship form closed down and Smt. Usha Goel W/o Late Sh.Gokul Chand Goel used to receive rent from the defendant no.1 and she received rent from June, 2009 to April, 2011 and thereafter on her request, the defendants started paying rent in the name of Hanuman Hosiery Mills, as there was some family problems between the legal heirs of Late Sh.Gokul Chand in respect of the assets left behind by Sh.Gokul Chand and the defendants relied upon her statement, again started paying rent in the name of M/s.Hanuman Hosiery Mills from May, 2011 till date. It is further submitted that at that relevant time, Smt.Usha Goel and other legal heirs also stated that they are in process of getting letter of administration in respect of ownership of the suit

property from concerned Court. In view of this, the present suit is liable to be dismissed with exemplary costs.”

6. Thus, in the written statement the factum of being inducted as tenant by M/s.Hanuman Hosier Mills has not been disputed. In the circumstance, examining various official witnesses as referred to above at the stage of defence evidence appears to be with a view to delay the disposal of the suit.

7. The witnesses now sought to be summoned were never cited as witnesses at the appropriate stage. When the trial was at the stage of defence evidence, the petitioner/defendant has filed the list of witnesses which is not permissible. Relevant provisions of Order 16 Rule 1 and 1A of the Code read as under:-

“1. List of witnesses and summons to witnesses-

(1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.

(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.

(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list. (4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed

by the [Court in this behalf within five days of presenting the list of witnesses under sub-rule (1)].

1A. Production of witnesses without summons- *Subject to the provisions of sub-rule (3) of rule 1, any party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents.”*

8. In Nandita Chaudhry vs. Surat Singh Rao, 2010 V AD(Delhi) 739, the Court while dealing with Order 16 rule 1 Sub rule (1) and (2) held as under:-

“It is apparent from this Order of CPC that list of witnesses is to be filed within 15 days of framing of issues and thereafter the Court has to be informed as to out of the list which of the witnesses the party was desiring of summoning through Court process and the party was given liberty to obtain summons on making an appropriate application within 05 days of presenting the list of witness under Sub-Rule (1). The intention of the legislature is clear that an application has to be made well in advance from the date fixed for evidence and the application cannot be made just on the date when the evidence is to be recorded.”

9. In view of the nature of the suit and the plea taken in the written statement, the learned Trial Court has rightly declined the prayer as the witnesses cited in the list of witnesses filed at the stage of defence evidence were not relevant.

10. The application under Section 151 CPC for tendering the evidence of defence witness has been dismissed observing as under:-

“19. The second application u/s 151 CPC is for tendering the evidence of the defendants witnesses alongwith the documents exhibited whose cross-examination has been conducted by the Local commissioner. Now as mentioned above I have already passed an order dt. 01.12.2014 whereby precisely this objection

was taken and disposed off. The Local commissioner has already recorded the evidence. Viz-a-viz this particular objection the defendants had also preferred through their counsel appearing before this Court also, a writ petition titled as “Anil Kumar Aggarwal Vs. Union of India and Anr.” which has since been dismissed. This application does not survive for adjudication and is a surplusage. The application is accordingly dismissed.”

11. Another application under Section 151 CPC for directing the plaintiff not to cause disturbance or to create any hindrance to the defendants from accessing the passage to the property/factory has been dismissed for the following reasons:-

“20. The third application is also u/s 151 CPC for directing the plaintiff not to cause disturbance or to create any hindrance to the defendants from accessing the passage to the property/factory. Matter is to be posted for final arguments/ripe for final arguments. In my opinion, it would appropriate that the controversy in the suit should be disposed off rather than adjudicating on fringe issue. This application is also otherwise not linked up with the cause of action pleaded in the suit, as such the defendant has an independent remedy by filing a fresh suit, this application is also dismissed.”

12. The impugned order dismissing all the three applications filed by the petitioner at the stage of defence evidence does not suffer from any illegality, infirmity or irregularity.

13. The power under Article 227 of Constitution of India vested in this Court needs to be exercised most sparingly and only in appropriate cases.

14. The instant petition does not fall in the above category, hence the impugned does not warrant any interference by this Court.

15. It may be noted here that CM(M) No.644/2014 filed by the present petitioner has been dismissed by this Court with cost of ₹50,000/- expressing anguish on the conduct of the petitioner for abusing the process of law by making following observation:-

“7.I wish I could have imposed more costs to send a strict message against filing of frivolous petitions, but, I cannot do so because the respondent is not appearing. It is however high time that message be sent out to the litigating public that judicial process is meant to be used and not abused.”

16. It is well settled that bogus and frivolous applications filed deliberately by the litigants to delay the trial needs to be dealt with heavy hands.

17. Since the instant petition is nothing but an abuse of process of law, the same is dismissed with cost of ₹1 lakh to be deposited by the petitioner with “Army Central Welfare Fund” at Director, Accounts Section, Room No.281B, Ceremonial and Welfare Directorate, Adjutant General’s Branch, South Block, Integrated HQ of MoD (Army), New Delhi, within four weeks from the date of this order and proof thereof shall be filed with the Registry and compliance shall be reported by the Registry to this Court.

CM No.13831/2015

Dismissed as infructuous.

**(PRATIBHA RANI)
JUDGE**

OCTOBER 01, 2015

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