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

+ RSA 48/2015

KRISHAN KALRA & ORS

..... Appellants

Through: Mr. Puneet Mittal, Advocate with Mr.
Kapil Gupta, Advocate, Ms. Vasudha
Bajaj, Advocate and Ms. Arushi,
Advocate.

versus

SANTOSH DESWAL

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **13.01.2017**

C.M. No.1203/2017 (under Order 22 Rules 2 to 4 by appellants)

1. This application is allowed limited to the purpose of disposing
of the review petition.

C.M. stands disposed of.

**C.M. No.1204/2017 (for condonation of delay in filing review
application)**

2. For the reasons stated in the application, delay of 140 days in
filing the review application is condoned.

C.M. stands disposed of.

RSA No.48/2015

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C.M. No.1205/2017 (exemption)

3. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

Review Application No.6/2017

4. The appellants, who are review petitioners, argue before this Court that gate at points AB, and from where the portion of the passage adjoining to their plots starts, should be in the exclusive lock and key of the appellants/review petitioners, and that this Court did not decide this issue as per the judgment of this Court dated 13.7.2016. The judgment of this Court dated 13.7.2016 was carried in the appeal in the Supreme Court under Article 136 of the Constitution of India and the Supreme Court passed the following order on 14.12.2016 entitling the appellants/review petitioners to file a review petition on the aforesaid aspect which is argued before this Court today:-

“ Heard learned counsel for the petitioners.

Delay condoned.

Application for substitution is allowed.

It is contended by the learned counsel for the petitioners that insofar as use of gate passage by both the parties is concerned, the

petitioners are not aggrieved thereby. However, the Appellate Court directed that the gate at points AB and CD, if locked, the keys in duplicate shall remain in possession of both the parties, and on that basis he argues that insofar as points AB is concerned, that leads to the house of the petitioners and, therefore, there is no question of giving keys of gate at point AB to the respondent. More so, when access to the respondent is allowed through point CD and he also gets access to his house from another gate. It is the submission that this was only the grievance which was projected by the petitioner before the High Court.

The judgment of the High Court does not reflect that this issue is specifically dealt with. It would, therefore, be open to the petitioner to file an application for review before the High Court. If such review application is filed within a period of three weeks from today, the same shall be considered on merits and shall not be dismissed on the ground of delay. We make it clear that in case the review application is dismissed and the petitioners are aggrieved, the petitioners will be at liberty not only to challenge the order that may be passed in the review application but the impugned order as well.

The special leave petition is disposed of.”

5. On the basis of the order of the Supreme Court dated 14.12.2016 reproduced above, it is argued that the issue argued on behalf of the appellants that they have exclusive entitlement to lock the gate at points AB with keys not being given thereof to the respondents was not decided by this Court when it passed the judgment dated 13.7.2016 and thus the judgment dated 13.7.2016 should be reviewed and set aside.

6. All that I can say, in the least is, that I am surprised as to how

the submission which has been made before this Court today in the review petition was so argued before the Supreme Court for seeking entitlement of the appellants/review petitioners to file this review application inasmuch as paras 8 to 10 of the judgment dated 13.7.2016 in fact and very much specifically deals with the issue at hand under the issue being whether the review petitioners/appellants have exclusive right in the passage adjoining the portion of the property of the appellants/review petitioners, and which starts after points AB till the end of passage. This issue has been decided as per paras 8 to 10 of the judgment dated 13.7.2016 wherein it has been held that the appellants/review petitioners are not to be in the exclusive user/entitlement of the passage after points AB till the end of the passage. Paras 8 to 10 by its detailed discussion and reasoning, and which follows from the earlier paras wherein the various sale deeds of the two properties are referred as also the site plans, show that there is very much a categorical finding of this Court that the appellants/review applicants have no exclusive right to the passage after points AB till the end of their property, and once that is so, automatically the argument of the appellants/review applicants stood negated of their exclusive entitlement to put a lock at the gate at points

AB because to the passage after points AB the respondent had a right and which right would be defeated if review petitioners have their exclusive lock at points AB. If what the appellants/review petitioners argue before this Court that they had an entitlement to exclusively put a lock at the gate at points AB would be correct, then, there was no need of this Court having given a categorical finding in the impugned judgment (and the impugned judgment only deals with this very aspect and no other aspect) that the entire passage, including from points AB till end of the passage, is common to both the parties to the suit being the appellants/review petitioners/defendants and the respondent/plaintiff. If the appellants/review petitioners are allowed to put their exclusive lock at gate at points AB, it will negate the right of the respondent/plaintiff to use the passage after points AB till the end of the passage and which right of the respondent to use passage even after points AB has been held in favour of the respondent/plaintiff as per the entire discussion, reasoning and conclusions stated in the judgment dated 13.7.2016.

7. The review petition is therefore wholly misconceived and the arguments on behalf of the review applicants are in the nature of seeking to

re-argue the RSA which is already decided by the detailed judgment dated 13.7.2016.

8. Dismissed.

VALMIKI J. MEHTA, J

JANUARY 13, 2017
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