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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 477/2016, C.M.No.18744/2016, C.M. No.18745/2016
C.M. No.18746/2016 & C.M. No.18747/2016
RAJWANTI SINCE DECEASED THR HER LR & ANR

..... Petitioners

Through Mr.S.C.Singhal, Advocate.

versus

KISHAN CHAND SHEHRAWAT & ORS

..... Respondents

Through None.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **17.05.2016**

The petitioner is aggrieved by the order dated 08.01.2013 vide which the application filed by him under Section under Order XXIII Rule 3 read with Rule 3-A of the Code of Civil Procedure (hereinafter referred to as the 'Code') was dismissed.

Submission of the petitioner is that although admittedly a consent decree was passed inter-se the parties (Raj Wanti since deceased) and Kishan Chand but it had been obtained under coercion and undue influence; her thumb impression had been obtained on various documents which included the aforementioned application which was without her knowledge; she being an illiterate lady, she did not know the contents of the aforementioned application. The aforementioned application seeking setting a side of this consent decree was

accordingly filed.

Record shows that a suit for specific performance was pending inter-se the parties. An agreement to sell dated 25.08.2004 had been executed between Raj Wanti and Kishan Chand Sehrawat pursuant to which Raj Wani had agreed to sell a portion of her property to Krishan Chand Sehrawat. Parties were related. This was qua the land owned by Raj Wanti located in village Rang Puri, (Nangal Dewat). The list of dates filed along with the petition has been perused. Although there is an ambiguity in the list of dates but on a query put to the learned counsel for the petitioner he admits that an FIR No. 460/2004 was registered under Sections 420/468/471 at PS Ambedkar Nagar on the complaint of Ram Prakash against the petitioner and her son-in-law (Jai Dev). On 07.11.2004 in the aforementioned pending suit (suit for specific performance), a consent decree was passed. (This consent decree dated 07.12.2004 has not been filed on record. Learned counsel for the petitioner submits that he had signed this consent decree but it was under an undue influence. He also admits that in terms of this decree, it had been agreed that FIR No. 460/2004 would stand quashed. This FIR was admittedly quashed on 02.05.2005 meaning thereby that in terms of this consent decree dated 07.12.2004, the parties had acted upon it; and this was to the benefit of the petitioner as the FIR (aforenoted) registered against her and her son-in-law was quashed pursuant thereto.

Learned counsel for the petitioner submits that thereafter he had

moved an application for setting aside of the consent decree by way of a substantive suit; that suit was withdrawn and he had been advised to move an application under Order XXIII Rule 3-A of the CPC. Record of the suit which had purportedly been filed and which had been permitted to be withdrawn giving him liberty to file the aforementioned application under Order XXIII Rule 3-A of the CPC is again not a part of this record and on a query put to the learned counsel for the petitioner on this score he has no answer.

The dates become relevant. The dates as reflected in the list of dates shows that the consent decree was passed on 07.12.2004. It is an admitted position that pursuant to the said consent decree, the terms of the consent decree were acted upon and that is why FIR No. 460/2004 was quashed which was on 02.05.2005. The petitioner had clearly derived a benefit under this consent decree and FIR which has been registered against respondent No.4 i.e. against the son-in-law of the petitioner stood quashed. Nevertheless the Act filed this application seeking setting aside of this consent decree on 08.01.2013 which was after a lapse of more than 9 years for which there is no explanation. The Trial Court has rightly noted that law of limitation is a clear hurdle in his way. That apart, after the application under Order XXIII Rule 3-A of the CPC was dismissed on 01.05.2013 there was again a lapse bordering almost to the point of negligence the part of petitioner as he has come before this Court only on 03.02.2016 i.e. after another gap of 3 years for which again there is no explanation.

The impugned order had noted the facts in the correct perspective. The Trial Judge has penned a 56 page order detailing the entire facts of the case as also the proposition of law. It was noted that the petitioner has derived a benefit out of the compromise decree dated 07.12.2004 pursuant to which FIR registered against her son-in-law and herself stood quashed. The question of her stating that she had been duped into this deal and then she having woken up from her slumber (by filing an application under Order XXIII Rule 3-A of the CPC) on 08.01.2013 challenging a decree dated 07.12.2004 after nine years was hopelessly barred by limitation. The application was dismissed on 01.05.2013 and here again, the petitioner slept over her rights and woke up again from her slumber on 03.12.2015 i.e. after a gap of three years to challenge the dismissal of her application under Order XXIII Rule 3-A of the CPC for which again there is no explanation whatsoever.

The impugned order, in this background, calls for no interference. Petition is without any merit. Dismissed with costs quantified at Rs. 10,000/-

INDERMEET KAUR, J

MAY 17, 2016
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