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

+ CM(M) 261/2015

SURAJ NARAIN

..... Petitioner

Through Appearance not given.

versus

PARMOD

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

02.11.2016

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1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to challenge the order dated 11.12.2013 by which his application moved under Section 151 CPC for supply of copy of the plaint and seeking permission to file written statement to the plaint was dismissed.

2. The present suit is filed for specific performance of the agreement to sell dated 19.12.2008 by the respondent. The case of the petitioner is that on 21.10.2013 he received a notice from the court and that is how he got knowledge about the pendency of the case. He engaged a counsel who appeared and submitted that he has not received the copy of the plaint. However, it was then that he got to know that the suit was filed by the respondent way back in 2009 and the petitioner had no knowledge about it. The petitioner claims that on 10.12.2013, the petitioner along with his

counsel inspected the court file and found that one advocate, namely, Sh.D.S. Khatri played a fraud on the petitioner as he had appeared without the consent or knowledge of the petitioner. Though it is admitted that Sh.D.S.Khatri in an earlier matter had appeared for the petitioner. However, it is stated that he was never engaged in the present matter though the signatures of the petitioner on the *vakalatnama* filed by Sh.D.S.Khatri is admitted. After the defence of the petitioner was closed, the said Advocate Shri D.S.Khatri withdrew his Vakalatnama and notice was sent to the petitioner. Based on this plea, the application was filed under Section 151 CPC for supply of a copy of the plaint, though an irrelevant prayer, and also for permission to file the written statement.

3. The trial court by the impugned order dismissed the application holding that the signatures of the petitioner on the *vakalatnama* have been admitted and hence, the application is frivolous. The application was dismissed with costs of Rs.10,000/-.

4. Learned counsel appearing for the petitioner has reiterated the submissions made before the trial court.

5. I may only note that against the impugned order dated 11.12.2013, the present petition was filed on 19.03.2014. Thereafter on several dates the petition has been returned under objections and re-filed till finally it was listed on 24.03.2015 before court. On that date, it was dismissed in default. It was also dismissed in default on 16.05.2016

6. It is manifest that the petitioner is treating the case very casually and pursuing his case in a very lethargic manner.

7. Be that as it may, it is manifest from the impugned order that the basic contention of the petitioner, namely, that he was not served has not been

gone into by the trial court while dismissing the application of the petitioner

8. Though as noted above, the application begins with an entirely innocuous and frivolous prayer seeking a copy of the plaint, essentially the relief sought was for an opportunity to file the written statement which right had already been closed earlier.

9. The ground for seeking relief was that the petitioner was not served and some advocate had appeared for him who had been earlier engaged in some other connection without instructions or information to the petitioner. The trial court has not dealt with the said submission of the petitioner.

10. Hence, subject to payment of costs of Rs.10,000/-, the petitioner is granted an opportunity to move an application for recall/modification/review of the order dated 11.12.2013 before the trial court to substantiate his contentions. In case any such application is filed within two weeks from today and the cost imposed today are paid, the trial court is requested to adjudicate such an application on merits uninfluenced by any observations made herein by this court.

11. With the above observations, the petition is disposed of.

JAYANT NATH, J

NOVEMBER 02, 2016

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