

\$~17

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 180/2015
SHAKUNTALA

..... Petitioner

Through Mr. Vijay Kinger, Adv.

versus

SHANKAR LAL AGGARWAL

..... Respondent

Through None.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **21.01.2016**

The petitioner is aggrieved by the order dated 09.12.2014 vide which appeal filed by the petitioner seeking setting aside of the order passed by the Civil Judge (wherein the application filed by the petitioner under Order 9 Rule 9 of the CPC seeking restoration of the suit) had been dismissed. The appeal had endorsed the findings returned by the Trial Judge.

Record shows that the present suit is a suit for possession, recovery of arrears of rent. This suit had been filed by the plaintiff on 02.04.2012. Written statement was filed on 24.05.2012. Replication was not filed. Matter was fixed for admn./denial of documents and framing of issues. The petitioner did not appear on 18.03.2013 and thereafter again on 19.08.2013 for which there is no plausible explanation, the suit was dismissed for non-prosecution as also for default in the post lunch hour. The application seeking restoration of the suit was filed 7- ½ months

later in which the averments were that the application could not be filed in time as the counsel for the petitioner was tensed and depressed due to death of his wife; admittedly the plaintiff herself did not take any step to find out the fate of her case. This Court also notes that the petitioner was in fact enjoying the interim protection which has been granted in her favour on 23.01.2013 and in fact thereafter she had stopped prosecuting her case. It was only in February, 2014, the petitioner had filed the present application. Her submission was that it was only in the last week of March, 2014 that her counsel had inspected the file; this is contrary to the record which shows that her counsel had inspected the file later i.e. on 05.04.2014 and not in March, 2014.

Even presuming that the averments made in the application under Order 9 Rule 9 of the CPC are correct, the averments clearly disclose that the plaintiff herself was never diligent in prosecuting the litigation. The plaintiff was in fact negligent as her submission that the wife of her counsel had died which was the reason why the counsel was not prosecuting the litigation, does not take away the obligation on the part of the plaintiff to have found out the fate of her case which she admittedly did not do so.

There are two concurrent findings by the Courts below. This Court is sitting in writ jurisdiction and unless and until there is a patent illegality or a perversity in the order of the two Courts below, this Court may not interfere. The judgments relied upon by the learned counsel for the petitioner reported as (2001) Insc 652 Davinder Pal Sehgal & Anr Vs. M/s Partap Steel Rolling Mills Pvt Ltd as also another judgment of a Bench of this Court in Sanjay Kumar and Anr. Vs. Smt. Sita Rani

Khanna & Others decided on 18.09.2007 do not have any bearing on the factual matrix of the instant case.

Petition is without any merit. Dismissed.

INDERMEET KAUR, J

JANUARY 21, 2016

A