

\$~A-18

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

+ CM(M) 383/2016 and CM No.14865/2016 (stay)

HOUSING DEVELOPMENT FINANCE CORPORATION
LIMITED

..... Petitioner

Through Mr.Ajay Saroya, Advocate.

versus

VISHAL SHARMA & ANR

..... Respondents

Through Mr.Chetanya Kakar, Advocate for R-
1

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

%

14.09.2016

1. This matter is taken up today as 13.09.2016 was declared a holiday on account of Eid.
2. By the present petition, the petitioner seeks to impugn the order dated 16.03.2016 passed by the trial court directing the representative of the plaintiff to be present in court for examination under Order 10 CPC.
3. The petitioner filed a suit under Order 37 CPC for recovery of Rs.27,94,019/-. Respondent No.1 entered appearance. Subsequently, summons for judgment were issued to respondent No.1 which were duly served. As an application for leave to defend was not filed, this court, where the matter was then pending, decreed the suit on 28.07.2014/01.09.2014.
4. Respondent No.1 has now filed an application under Order 37 Rule 4 CPC for setting aside the judgment/decreed dated 28.07.2014/01.09.2014

along with an application under Section 5 of the Limitation Act for condonation of delay in moving the said application.

5. When the said application came up for hearing, the trial court passed the impugned order.

6. I have heard the learned counsel for the parties.

7. Learned counsel for the petitioner submits that there is a decree in favour of the petitioner and examination of the petitioner/plaintiff under Order 10 would not arise.

8. Order 10 (2) CPC reads as follows:-

“Order 10-EXAMINATION OF PARTIES BY THE COURT

xxx

2. Oral examination of party, or companion of party.- (1) At the first hearing of the suit, the court—

(a) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in court, as it deems fit; and

(b) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in court or his pleader is accompanied.

(2) At any subsequent hearing, the court may orally examine any party appearing in person or present in court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied.

(3) The court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party.”

9. Hence, Order 10 sub-rule 2 CPC provides that the court may with a view to elucidate the matters in controversy in the suit examine orally such

of the parties as it deems fit.

10. Clearly, the said provision is applicable only where the suit is pending. Here the suit has already been decreed. What is to be adjudicated upon is an application filed by respondent No.1 seeking to set aside the decree dated 28.07.2014/01.09.2014 filed under Order 37 Rule 4 CPC and Section 5 of the Limitation Act. There was no occasion to examine the plaintiff/representative of the plaintiff under Order 10 CPC. The impugned order is accordingly set aside.

11. The petition is disposed of

JAYANT NATH, J

SEPTEMBER 14, 2016

rb