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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 785/2014 & C.M.No.13932/2014 (stay)

SMT. USHA RANI & ANR

..... Petitioners

Through Mr. Ankit Jain, Adv.

versus

SHRI DINESH KUMAR SHARMA & ORS

..... Respondents

Through Mr. D.S. Dalal with Ms. Babita, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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21.01.2016

Order impugned before this Court is the order dated 02.06.2014 vide which the application filed by the petitioners (defendants No. 1 & 2) seeking a recall of the order dated 14.03.2012 vide which the right of the defendant to lead evidence stood closed, was dismissed.

Record shows that there are two cross suits which have been filed by the respective parties. Both the suits are for possession. Both the suits had been clubbed together and the suit filed by the respondent/Dinesh Kumar was treated as the lead suit and evidence was being led in those proceedings. Record further reflects that the earlier defendant had sold his interest in the property to the present petitioner (defendants No. 1 & 2) and the application filed by the petitioners seeking impleadment under Order XXII Rule 10 of the CPC had been allowed on 16.03.2013. Before this date, on 14.03.2012, the earlier defendant who was contesting the proceedings not having appeared before the Court, the defendant's evidence stood closed on 14.03.2012. The matter was thereafter fixed for final arguments on 19.05.2012. Before 19.05.2012 i.e. on 16.05.2012, the application under Order XXII Rule 10 of the CPC had been filed by the present petitioner which as noted supra had been allowed on 16.03.2013.

On 21.05.2013, the petitioner had moved the application seeking recall of the order dated 14.03.2012. Vide the impugned order dated 02.06.2014, this had been declined.

This Court notes that since there are two cross suits and the earlier defendant was not appearing and had sold his interest to the present petitioner, in case the petitioner is not permitted to continue with his evidence in defence, a valuable right would be lost to the petitioner. There is no doubt that the delay has been suffered by the respondent for which this Court is of the view that he can be compensated with costs.

Accordingly, while allowing the prayer made in the application and recalling the order dated 14.03.2012 as also the subsequent order dated 02.06.2014, the petitioner is granted permission to summon DW-1 (on a date to be fixed by the Trial Court) making it clear that only one opportunity will be granted to the petitioner for the said purpose. On the submission made by the learned counsel for the petitioner, the petitioner is also granted permission to produce himself into the witness box as also one more witness apart from himself to conclude his evidence in defence. The Trial Judge will give dates as per diary. This order is passed subject to payment of costs of Rs.10,000/- to be paid to the counsel for respondents No. 1 to 3.

Petition disposed of.

INDERMEET KAUR, J

JANUARY 21, 2016

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