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

+ CM(M) 722/2016

SURESH KUMAR AGGARWAL & ORS Petitioners
Through Mr. Shiv Charan Garg and Mr.Imran
Khan, Advocates.

versus

VEER BALA AGGARWAL & ORS Respondents
Through Mr.Naresh K.Daksh, Advocate.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% 29.07.2016

CM No. 26757/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 722/2016 and CM No. 26758/2016 (stay)

1. By the present petition, the petitioners seek to impugn the order dated 11.04.2016 and for a direction to the trial court to consider IA No. 24378/2015 which according to the petitioner is pending for a long time.
2. The suit is filed by the respondent for declaration, mandatory injunction and for ejection of the petitioners regarding property being Room No.2, situated on the Northern Side of the land and property No.2, Under Hill Road, Delhi. By the impugned order, the trial court had directed the petitioners/defendants No. 1 to 5 to lead evidence on 4th, 5th, 6th, 7th & 11th May 2016 and also directed the defendants No. 1 to 5/petitioners that

they will only summon witnesses which have been mentioned by them in their original list of witnesses and that they will complete their entire evidence on the above mentioned dates.

3. Learned counsel appearing for the petitioners has relied upon the earlier orders passed by this court when the suit was pending before this court dated 20.02.2013, 08.03.2013 and 29.10.2015 to contend that there was some confusion inasmuch as he had moved application for permission to summon official witnesses other than those mentioned in the list of witnesses filed by him. He submits that however by order dated 29.10.2015 there was inadvertent recording of his submissions and to clarify the said order, IA No. 24378/2015 was filed before the High Court itself. In the meantime, before this application could be disposed of, the suit was transferred to Tis Hazari Court. He submits that the trial court should adjudicate this application first inasmuch as it pertains to the evidence that the petitioner would like to lead.

4. A perusal of the order dated 20.02.2013 shows that the application being IA No. 22174/2012 of the defendants No. 1 to 5/petitioners was allowed. However, the petitioners were allowed to summon only the witnesses detailed in the list of witnesses.

5. Similarly, the order dated 08.03.2013 shows that IA No. 3948/2013 filed by defendants No. 1 to 3 & 5/petitioners was allowed though the order notes that the witnesses mentioned in the application find mentioned in the list of witnesses.

6. The above two orders were subject matter of challenge before this

court vide an OA. These were disposed of on 29.10.2015 with the directions as follows:-

“14. These applications and O.As are disposed of with the consent order that the contesting defendants as a set will not get more than five opportunities each for each set of defendants to complete their evidence. The five dates are for both examination-in-chief and cross-examination. The contesting set of defendants will be entitled to summon official witnesses in terms of their list of witnesses which have already been filed but it will be the responsibility of the contesting defendants to bring the witnesses on the dates fixed for evidence failing which the right to lead evidence will automatically stand closed on the fifth date given for leading of evidence by the defendants.

Applications and O.As are disposed of accordingly.”

7. A perusal of the application I.A. No.24378/2015 filed by the petitioner/defendants No. 1 to 3 & 5 shows that he again relies upon IA No. 22174/2012 and IA No. 3948/2013 and the consequent orders disposing of these applications.

8. The only grievance of the learned counsel appearing for the petitioner is that this application should be decided before his evidence is finally closed.

9. Learned counsel appearing for the respondent/plaintiff has vehemently opposed this petition pointing out that the time period prescribed by the trial court as well as by the High Court to the defendants/petitioners to lead evidence has already expired. He further submits that the plaintiff's evidence was closed in 2011 and the petitioners are only using dilatory tactics to delay the disposal of the suit which is pending.

10. In my opinion, it would be appropriate for the trial court to first dispose of IA No. 24378/2015 expeditiously. This is so as the petitioner in effect seeks to lead the evidence of witnesses not mentioned in his list of witnesses. It would not be proper to close the evidence of the petitioner without first adjudicating the application. The present petition is accordingly disposed of with the above observations.

11. It is however clarified that any observation made hereinabove would not in any manner influence the decision of the trial court while adjudicating IA No. 24378/2015. The same may be disposed of in accordance with law.

Dasti.

JAYANT NATH, J

JULY 29, 2016

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