

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

Date of Decision: November 3rd, 2016

+ CRL.M.C. 3208/2016

MOHIT TIWARI

..... Petitioner

Through Mr.Aditya Kala, Adv.

versus

STATE & ORS

..... Respondents

Through Ms.G.M. Farooqui, APP.

**CORAM:
HON'BLE MR. JUSTICE P.S.TEJI**

P.S.TEJI, J.

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure (hereinafter shall be referred as Cr.P.C.) for restoration of criminal revision petition no.05/2015 titled '*Mohit Tiwari v. State & Ors.*' dismissed in default on 19.03.2016 by the learned Additional Sessions Judge-04, North West, Rohini, Delhi.

2. Facts, in brief, are that an application under Section 156(3) Cr.P.C. was filed by the petitioner before the learned Magistrate. In the application, it was alleged that the petitioner is the owner of land measuring 3 bigha 17 biswa out of Khasra No.371 min. Village Sayed Nangloi, Delhi and he purchased the said plot from its lawful owner. Some land grabbers in collusion with local

politicians approached the petitioner in 2010 to sell the plot in question, but he refused. Some aggressors tried to grab the said land on 04.09.2010 for which an FIR No.274/2010, under Sections 147/148/149/323/506/427 IPC and Sections 27/25/54/59 of the Arms Act, Police Station Paschim Vihar was registered. To pressurize the petitioner, a Kalandara under Section 145 Cr.P.C. was got drawn and proceedings were referred to SDM, Punjabi Bagh wherein the learned SDM sealed the property of the petitioner. It was alleged against the petitioner that the plot in question was already acquired vide award no.2202, but the documents collected by the petitioner revealed that tampering was done in the official records. The petitioner collected documents which show that his plot in question was an un-acquired plot of land. A civil suit was filed by the petitioner against Sh.Krishan Pal who claimed the ownership over the land in question and others also. The petitioner had prayed for registration of FIR against the accused persons under Section 468/471 IPC.

3. The learned Magistrate vide order dated 28.04.2015 dismissed the application under Section 156(3) Cr.P.C., however called the petitioner to lead pre-summoning evidence. Thereafter, the petitioner filed a revision petition before the Court of Session which was dismissed in default vide impugned order dated 19.03.2016. Feeling aggrieved by the same, the present petition has been preferred by the petitioner.

4. Arguments advanced by the counsel for the petitioner were heard.

5. The grounds taken in support of the present petition and the arguments advanced by the counsel for the petitioner are that the petitioner was pursuing one more revision petition between the same parties which was pending in North District of Delhi, whereas the revision petition in question was pending in North West District. The petitioner preferred a transfer petition and got the permission to withdraw the other revision petition to get it presented before the learned District Judge, North West District. It was argued that due to inadvertence the petitioner could not appear before the learned ASJ due to which the revision petition was dismissed in default.

6. Perusal of record shows that the revision petition came up for hearing before the Court below on 14.08.2015. It was submitted by the counsel for the petitioner that connected matter between the parties was pending before another Court and it was requested that both the cases be assigned to one Court. On 17.08.2015, it was observed that an application for transfer of matter inter-district needed to be moved before this Court. On 18.08.2015, adjournment was sought by the petitioner to approach this Court for getting the two cases transferred. On 29.09.2015, it was informed by the petitioner that a transfer petition was filed before this Court. Thereafter on 21.12.2015, 27.01.2016 and on 19.03.2016, the petitioner did not appear before the Court below due to which the revision petition was dismissed in default on 19.03.2016 due to non-appearance of the petitioner.

7. The record reveals that the petitioner had approached this

Court for getting transferred two revision petitions pending in different District Courts. The ground taken by the petitioner for his non-appearance before the Court below is that due to inadvertent mistake he could not appear before the Court below.

8. In view of the above mentioned facts and circumstances, this Court is of the considered view that it would be in the interest of justice to give another opportunity to the petitioner to pursue his revision petition. Consequently, the impugned order dated 19.03.2016 passed by the Court below is set aside and the matter is remanded back to the Court below. The petitioner is directed to appear before the Court concerned on 02.11.2016.

9. The present petition is disposed of accordingly.

NOVEMBER 03, 2016
dd

(P.S.TEJI)
JUDGE