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

+ CM(M) 9/2017 & CM Nos.215/2017 & 216/2017

MADHU BAJAJ & ORS Petitioner
Through Ms.Sangeeta Sondhi and Ms.Tarini
Sahai, Advocates

versus

MADHU BHANDARI & ORS Respondent
Through Mr.Anupam Srivastava and
Dr.Chandra Shekhar, Advocates for R-1

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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04.01.2017

1. Advance copy of the petition has been served on the respondents. Learned counsel for respondent No.1 has entered appearance.
2. By the present petition under Article 227 of the Constitution of India the petitioners seek to impugn the order dated 5.10.2016 by which the evidence of the petitioner was closed. The plaintiff/respondent No.1 has filed the present suit for partition. The matter was transferred from the Delhi High Court by order dated 12.7.2016. Thereafter it is stated that the matter was listed before the District Judge on 3.9.2016 and it was marked to the present trial court. On 29.9.2016 the matter was listed in the present court for the first time when a detailed order was passed appointing a Local Commissioner to conduct cross-examination. The case was fixed for examination in chief of the witnesses of the defendants/petitioners and respondents No.2 and 3 before the court on 5.10.2016. Affidavits by way of evidence of the remaining defendants was to be filed by 3.10.2016. A copy

of the order was to be given Dasti to the counsel for the parties. On 5.10.2016 when the matter was listed, none appeared for the petitioners. The trial court accordingly noting that no evidence has been filed by the petitioners and none is present also on behalf of the petitioner rightly closed the right of the petitioner for evidence.

3. Learned counsel appearing for the petitioner has submitted that evidence by way of affidavit of one of the witnesses Smt.Madhu Bajaj was filed way back on 6.11.2015. Further, she submits that the list of witnesses had already been filed on 29.5.2014. She submits that inadvertently because of confusion she did not know the date before the court as 5.10.2016 and also the fact that the evidence by way of affidavit had to be filed by 3.10.2016. She submits that this fact is apparent from a certified copy of the order dated 29.9.2016 placed on record. The order was directed to be given Dasti to the counsel for the parties. Counsels for the other parties have received copies of the order making an endorsement which is on record whereas the petitioner inadvertently did not know that the order is to be given Dasti and did not take the Dasti order. As petitioners were not aware about the date before the court being 05.10.2016, none appeared for the petitioner on the said date.

4. She also points out to order of this Court where the matter was earlier pending dated 25.4.2014 where a direction was passed that the evidence of the petitioners would be led after evidence of respondents No.2 and 3 is completed.

5. It is obvious that the petitioners could not bring all these facts to the notice of the court when the impugned order was passed as they were absent. The explanation given by the petitioner shows that the absence was

for bona fide reasons.

6. Accordingly, in the interest of justice, one last opportunity is granted to the petitioners to file her evidence by way of evidence of the remaining witnesses as shown in the list of witnesses filed on 29.5.2014 within six weeks from today. After evidence by way of affidavit is filed before the trial court the parties are free to approach the trial court for further proceedings including cross-examination by the Local Commissioner already appointed vide order dated 29.9.2016. Parties to appear before the trial court on 16.3.2017.

7. Petition stands disposed of. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

JANUARY 04, 2017

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