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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 221/2017

SURESH SHARMA Petitioner
Through Mr.D.C.Sharma, Advocate

versus

KISHAN BADALIA Respondent
Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% 22.02.2017

CM No.7358/2017

Exemption allowed, subject to all just exceptions.

CM(M) 221/2017 & CM Nos.7337/2017 & 7338/2017

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 19.01.2016 by which a review petition filed by the respondent was allowed and the judgment dated 2.5.2015 was recalled.

2. The petitioner/plaintiff has filed a suit for permanent injunction to restrain the respondent from selling, alienating, encumbering or creating any third party interest in the suit property shop No.40 in site No. 14, Old Market, Timarpur, Delhi. The respondent filed a counter-claim seeking a mandatory injunction in his favour directing the petitioner to remove the locks put on the said shop. On an interim application filed, on 25.9.2012 the trial court passed a status quo order. Both the parties instituted an appeal before the appellate court. Two appeals filed were disposed of by a common order dated 2.5.2015. The appeal filed by the petitioner was dismissed. As far as the appeal filed by the respondent was concerned the appellate court

held that prima facie the counter-claim filed by the respondent appears to be barred by limitation as prescribed under section 6(2) of the Specific Relief Act and hence no prima facie case can be made out by the respondent on account of which the petitioner can be directed to hand over the keys of the said premises to the respondent. Hence, the appeal of the respondent was also dismissed.

3. By the impugned order the appellate court has allowed the review petition filed by the respondents holding that the observations of the court holding that the counter-claim has been filed by the respondent under section 6(2) of the Specific Relief Act is erroneous on the face of the record as from the counter-claim it is manifest that the counter-claim is not under section 6 of the Specific Relief Act. In fact as per order the counter-claim is filed under section 5 of the Specific Relief Act and the person is required to prove the legal entitlement to the possession for specific immoveable property.

4. I have heard learned counsel appearing for the petitioner. He has argued that there was no error apparent on the face of the record and the court has exercised appellate powers.

5. Order 47 Rule (1) CPC reads as follows:-

“1. Application for review of judgment.- (1) Any person considering himself aggrieved,—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(C) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due

diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation : The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.”

6. It is clear from the order passed by the appellate court that it had dismissed the appeal of the respondent on the ground that it is filed under section 6 of the Specific Relief Act and hence is barred by limitation. A perusal of the appeal/counter-claim would show that this is an error apparent on the face of the record. The said observation has been made by the appellate court on account of a mistake/error apparent on the face of the record. There were sufficient reasons available to the court to allow the review petition. Hence, there are no grounds to interfere in the impugned order. The petition is without merits and is dismissed. All pending applications also stand disposed of.

JAYANT NATH, J

FEBRUARY 22, 2017/n