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IN THE HIGH COURT OF DELHI AT NEW DELHI

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EX.F.A. 10/2016 and C.M. Appl. No. 8660/2016

PROMILA & ORS

..... Appellants

Through: Mr. Manish Rathore and Ms. Promila
Devi, Advocates.

versus

LALTA PARSAD @ LALTU PARSAD & ANR Respondents

Through: Ms. Priyadarshi Gopal and Mr. Abhas
Mishra, Advocates for R-1.
Mr. Hemant Chaudhary, Advocate for
R-2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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09.10.2017

1. On 19.5.2017 this Court passed the following order:-

“1. On the first call an adjournment was sought on behalf of the appellants without any reason. On the second call a reason is given of illness of the counsel which is not stated in the first call.

2. Counsel for respondent no.1 vehemently opposes the adjournment on the ground that appellants are enjoying benefits of an ex parte interim order dated 9.3.2016 resulting in the fact that respondent no.1 is denied benefit of a judgment and decree way back for possession of the suit property on 18.11.2014. The ex parte interim order is continuing without service upon the respondent no.1/plaintiff and who is appearing through counsel today without even notice being served since 18.11.2014.

3. In the opinion of this Court strategies for extending the interim order without any basis and depriving the fruits of litigation to a successful decree holder should not be encouraged, and therefore, interim order dated 9.3.2016 is vacated.

4. All though I was inclined to dismiss the appeal itself for non-prosecution, however, in the interest of justice and subject to payment of costs of Rs.25,000/- to the respondent no.1, and which costs be paid within a period of four weeks, list on 9th October, 2017.”

2. Today, very brazenly and blatantly appellants say that they will not comply with the order dated 19.5.2017 and they will not deposit the costs. It is stated that the appellants are not in a position to pay a sum of Rs.25,000/- imposed as costs. I do not think that anyone can take benefit of an interim order, continue with the appeal, not pay costs and then claim that the appeal should be decided on merits.

3. In view of the non-compliance by the appellants of the order dated 19.5.2017 this appeal is accordingly dismissed for non-compliance of the order dated 19.5.2017 of payment of costs.

4. I would also like to note that this is an execution first appeal with respect to judgment and decree dated 18.11.2014 and against which the appellants as objectors had filed objections. By a detailed judgment passed by the court below dated 19.1.2016 the objections of the appellants/objectors was dismissed, and who were only continuing in possession because of the interim order dated 9.3.2016 passed by a Learned Single Judge of this Court while issuing notice in this EFA. Therefore, while dismissing the EFA it is also clarified that the interim order dated 9.3.2016 will stand vacated, though the same was vacated also by the order dated 19.5.2017.

VALMIKI J. MEHTA, J

OCTOBER 09, 2017/AK.
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