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

% *Date of decision:* 17.02.2017

+ C.R.P. 39/2017 & CM Nos.6285-86/2017

MANJU TANEJA Petitioner

Through Ms.Suman Chauhan, Advocate

Versus

L S PAWAR & ORS Respondents

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. By the present petition filed under Section 115 of the CPC read with Article 227 of the Constitution of India, the petitioner seeks to challenge the order dated 24.01.2017 by which an application filed under Section 114 read with Order 47 CPC seeking review of judgment dated 14.07.2016 was dismissed.

2. The grounds taken in the review application were that the counsel appearing for the petitioner has made a concession to the court and has confined his argument to the issue of damage/mesne profits and did not challenge the finding of the trial court regarding the other reliefs. It is submitted that the petitioner had never authorised her counsel to challenge the decree of the trial court dated 04.03.2015 only limited to the issue of quantum of damage/mesne profits.

3. The respondents filed a suit for permanent injunction, possession and damages. It was claimed in the plaint that the respondent/plaintiff is the absolute owner of the property at Kalkaji and had purchased the said

property from the previous owner on 08.06.2005 vide sale documents duly registered with the Sub-Registrar. The contention was that the petitioner has unauthorisedly entered into the suit property.

4. The petitioner filed a written statement where she has denied that the respondent is the owner of the suit property. It has been averred that the wife of the respondent had taken a sum of Rs.5 lacs from the petitioner as part consideration amount for sale of the property in question and the remaining amount of Rs.2.5 lacs were to be paid to the wife of the respondent at the time of execution of the sale deed and other documents. It was urged that the wife of the respondent handed over peaceful vacant possession of the suit property to the petitioner.

5. The trial court had decreed the suit and had also passed a decree of mesne profits entitling the respondent to recover damages at the rate of Rs.10,000/- per month from the petitioner w.e.f. 01.05.2006 till the vacant possession of the suit property shall be handed over to the respondent.

6. An appeal was filed by the petitioner where the learned counsel appearing for the petitioner had argued only regarding the findings of the mesne profits and damage. The appellate court also dismissed the appeal. The appellate court while dismissing the appeal noted that as per rules 15, 19 and 26 of the Bar Council of India, Rules 1975 there is nothing required to show that an advocate has no right to make any compromise or concession without proper and specific instructions of his/her client in writing. The appellate court also perused the Vakalatnama and noted that the counsel was given an authority to withdraw and compromise the appeals etc. It was also noted that the petitioner has not filed any complaint against the counsel and the application was accordingly dismissed.

7. I have heard the learned counsel for the petitioner.

8. In my opinion, there is no reason to differ with the view taken by the appellate court. There is nothing on record to show that there was no instruction to the counsel to address the court only limited to the issue of mesne profits and damages for the petitioner. In this context reference may be had to the judgment of this Court in *Paul Properties Pvt. Ltd. & Anr. v. Estate Officer Life Insurance Corporation of India & Anr.*, LPA 298/2010 (MANU/DE/1511/2010), wherein this court held as follows:

“33. At this juncture, we think it appropriate to observe that on a keener scrutiny of the order of the proceedings before the learned Single Judge, it is clear that it is an unequivocal concession with regard to a finding of fact which has been arrived at by the Estate Officer. While the learned Single Judge was going to dismiss the writ petition, time was sought for and thereafter, concession was given. The concession of a counsel in a court of law has its own sacrosanctity. It is not the case where there was no consultation whatsoever. On a scrutiny of the entire gamut of the facts, it emerges with utmost clarity which can be envisioned that a maladroit attempt was made to take a somersault and wriggle out of the same. In case the same, if we allow ourselves to say so, is permitted, it will usher in a state of anarchy in the process of adjudication and the high tradition of the Bar and the acceptance of statements made at the Bar would be in jeopardy. The law does not countenance the same either in the expanse of substantive law or in the expansion of adjective law.”

9. In the light of the above judgment, in my opinion, the petitioner cannot be permitted to resile/back out from the concession/statement made in court.

10. I have in any case perused the record of the case. In my opinion, no prejudice has been caused to the petitioner by the act of the counsel. The

trial court in the decree specifically recorded that the respondent showed their title to the suit property on the basis of the Registered General Power of Attorney, Agreement to Sell etc. On the other hand, the petitioner has neither in the written statement nor in the documents filed alleged that these documents relied upon by the respondent were false, fabricated or forged. Further the petitioner has not brought on record even an iota of evidence to show that Smt.Kiran was the wife of the respondent or that she had any right title or interest in the suit property or that she had transferred the same in favour of the petitioner after receiving consideration of Rs.5 lacs.

11. I may add that the written statement filed by the petitioner inspires no confidence. The only argument raised is that the sum of Rs.5 lacs was handed over to the wife of the respondent as part consideration and Rs.2.5 lacs were to be paid at the time of execution of the sale deed. Based on this alleged transaction, it is claimed that the wife of the respondent handed over peaceful vacant possession of the suit property to the petitioner. From the pleadings and other evidence on record, it is clear that the facts pleaded and sought to be proved do not give rise to any right in favour of the petitioner. Hence, the concession of the counsel for the petitioner did not cause any prejudice to the petitioner.

12. There is no merit in the present petition and the same is dismissed. All the pending applications are also dismissed.

JAYANT NATH, J.

FEBRUARY 17, 2017/v