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

+ CM(M) No.539/2016

P S KRISHNAMURTHY

..... Petitioner

Through: Mr. Anil Kaushik with Mr. Abhishek  
Mishra, Advs.

versus

ASIAN PAINTS (INDIA) LTD & ANR

..... Respondents

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

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**13.07.2017**

1. This petition under Article 227 of the Constitution of India impugns the orders dated 5<sup>th</sup> February, 2013, 27<sup>th</sup> September, 2014 and 2<sup>nd</sup> April, 2016 (of the Civil Judge-02 (Central), Tis Hazari Courts, Delhi in Suit No.49/11) and seeks a direction to the Trial Court to first re-construct the judicial record before proceeding further with the suit.
2. The petition was entertained and notice thereof ordered to be issued and the Trial Court record requisitioned.
3. The Trial Court record has been received.
4. Though the report of the Court Master under the order of 14<sup>th</sup> December, 2016 is to the effect that neither of the two respondents have been served but the counsel for the petitioner states that the respondents have been served.
5. However considering the nature of the controversy, I do not deem it appropriate to serve the respondents even if they have not been served with the notice of this petition as yet.

6. The counsel for the petitioner has been heard.

7. The counsel for the petitioner has argued (i) that the petitioner / plaintiff had in the year 1993 instituted the suit from which this petition arises against the respondents no.1&2 namely Asian Paints (India) Ltd. and Victor Fernandes with respect to shares purchased by the petitioner / plaintiff of the respondent / defendant no.1 Asian Paint (India) Ltd.; (ii) the petitioner / plaintiff applied for amendment of the plaint and which was declined by the Civil Judge before whom the suit was pending; (iii) the petitioner / plaintiff approached this Court which allowed the amendment; (iv) that thereafter the Civil Judge before whom the suit was pending framed a preliminary issue in the suit; (v) the said preliminary issue in the suit was decided against the petitioner / plaintiff and the suit was dismissed; (vi) the petitioner / plaintiff preferred a Revision Petition against the aforesaid order of dismissal of the suit and which Revision Petition was allowed and the suit remanded to the Civil Judge for further decision; (vii) that the file of the suit was not located and the matter remained pending for long; (viii) finally on 16<sup>th</sup> December, 2011 it was learnt that the suit file had been weeded out; (ix) the Civil Judge vide impugned order dated 5<sup>th</sup> February, 2013 proceeded *ex parte* against both the respondents / defendant and listed the suit on 21<sup>st</sup> March, 2013 for *ex parte* evidence of the petitioner / plaintiff; (x) that without the file of the suit having been re-constructed, the petitioner / plaintiff could not have led *ex parte* evidence; (xi) the petitioner / plaintiff thus filed an application under Sections 152 and 153 of the Code of Civil Procedure, 1908 (CPC) for rectification of the order dated 5<sup>th</sup> February, 2013 and for the file to be re-constructed; (xii) the aforesaid application was

dismissed vide impugned order dated 27<sup>th</sup> September, 2014; and, (xiii) the petitioner / plaintiff filed an application for review of the order dated 27<sup>th</sup> September, 2014 and which application for review was dismissed vide impugned order dated 2<sup>nd</sup> April, 2016.

8. It is argued that the learned Civil Judge, without considering that without the suit file being re-constructed no proceeding can take place, has passed the impugned orders.

9. I have perused the Trial Court record which has been requisitioned in this Court. A perusal thereof shows the suit file to have been already re-constructed.

10. I have thus enquired from the counsel for the petitioner / plaintiff that once the suit file has already been re-constructed, why is the petitioner / plaintiff instead of proceeding to prove its case, wasting his time in filing misconceived applications and now in pursuing this petition.

11. The counsel for the petitioner / plaintiff first stated that the file has not been re-constructed. However on being asked as to what is missing from the file as is before this Court, he states that nothing is missing and the entire file has been re-constructed. He however states that the file has not been “formally re-constructed”. He also states that there is no original plaint.

12. It is not as if the Trial Court has in any way stopped the petitioner / plaintiff from proceeding with his *ex parte* evidence owing to there being no “formal order” of re-construction. The insistence of the counsel for the petitioner / plaintiffs on a “formal order” of re-construction is not only misconceived but to the prejudice of the petitioner / plaintiff himself whose claim has been kept pending for long. A perusal of the order sheet of the

Trial Court record shows that on 6<sup>th</sup> July, 2013 the petitioner / plaintiff sought time for re-construction of the file; on 17<sup>th</sup> August, 2013 the counsel for the petitioner / plaintiff filed documents for re-construction of the file. It appears that in pursuance thereto the entire file has been re-constructed and according to the counsel for the petitioner / plaintiff also nothing is missing therefrom now.

13. The petitioner / plaintiff still refuses to proceed with the suit.

14. The petition is disposed of observing (i) that once it is on record of the Trial Court that the original file has been weeded out; (ii) in pursuance to the order aforesaid the petitioner / plaintiff has been permitted to re-construct the file and the file has so been re-constructed, the petitioner / plaintiff to proceed with leading his *ex parte* evidence to prove his case.

15. I am refraining from imposing costs on the petitioner / plaintiff.

16. The Trial Court record which was requisitioned be returned forthwith.

**RAJIV SAHAI ENDLAW, J**

**JULY 13, 2017**

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