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

+ CM(M) 642/2016

SATINDER SINGH & ORS

..... Petitioners

Through: Mr.S.C.Singhal, Advocate.

versus

S K LUTHRA & ANR

..... Respondents

Through: Mr.Puneet Bajaj, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **11.05.2017**

CM No.23967/2016

1. Exemption allowed subject to all just exceptions.
2. Application is disposed of.

CM(M) 642/2016

1. The petitioners have invoked the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India impugning the order dated 2nd February, 2016 whereby the prayer of the petitioners (who are defendants No.1 to 4 in the Civil Suit No.163/14) to place on record the newly prepared site plan has been declined by the learned Trial for the following reasons:-

‘4. *I have heard the arguments and perused the record.*

5. *Vide the present application defendants seek two reliefs, one for placing their site plan on record alongwith opportunity for tendering and proving the same and the second relief is for recalling PW-1 and cross examining him upon this site plan. It is firstly observed that the applicant/defendants in their application have stated that the site plan of the plaintiff is not clear. With respect to this averment it is observed that the defendants had all rights and opportunities to state so in their*

pleadings of WS and to cross examine PWs upon the plaintiff's site plan. Secondly, it is seen that there is no reason whatsoever stated in the application that why the document i.e. site plan, proposed to be placed on record, could not be filed earlier when a considerable period of about 8 years have elapsed since filing of WS. Thus, the application is bereft of any reason or any explanation for this long delay. Thirdly, the site plan of defendants has been very recently prepared as per the alleged visit of Draughtsman in July, 2015 and it cannot be assumed to reflect the situation of the site as on the date of filing of suit or the date of filing of amendment application by the plaintiffs. Thus, for all these reasons, I find no merit in the prayer to bring on record the document i.e. site plan of the defendants.

6. *The other prayer for recalling PW-1 to cross examine him consequently falls. Even otherwise there is no reason to recall PW-1 and allow his further examination when defendants had the opportunity to cross examine PW-1 upon his case.*

7. *In view of above discussion, the present application is dismissed.*

*Sd/-
Civil Judge-06//Central
Tis Hazari Courts
02.02.2016'*

2. On 11th July, 2016, when this petition came up for hearing for the first time submissions of the learned counsel for the petitioner has been recorded as under:-

"Learned counsel for the petitioners seeks an opportunity to place on record a copy of the site plan which he proposes to file. He also submits that he confines his prayer only to the fact that he be permitted to place on record this site plan and that he would not press the prayer regarding recall of PW-1 for cross-examination on the proposed site plan which he seeks to file.

At his request, adjourned to 20.07.2016.'

3. Since the prayer is now restricted only to the filing of the site plan, it

has been submitted by Mr.S.C.Singhal, Advocate that delay in filing the site plan does not have the effect of delaying the disposal of the suit or causing any such prejudice to the respondent/plaintiff which cannot be compensated in terms of cost, hence the same may be allowed.

4. Mr.Puneet Bajaj, Advocate for the respondents/plaintiffs has submitted that the correctness of the site plan executed at the time of entering into the transaction and pleaded in the amended plaint was never disputed by the petitioner/defendant in the amended written statement or at any subsequent stage. It has been contended that the trial is at last stage and for a period of more than eight years, the correctness of the site plan filed by the respondents/plaintiffs was not questioned. The petitioners/defendants No.1 to 4 cannot be permitted to get another site plan prepared at the fag end of the trial and place the same on record.

5. The Civil Suit No.163/2014 has been filed seeking the relief of declaration, possession as well as for permanent and mandatory injunction.

Para 2 of the amended plaint reads as under:-

'2. That the plaintiff No.1 purchased a shop constructed upto ground floor at WZ-1672/5, Nangal Raya, (on the road linking Jai Road and Pankha Road) New Delhi-110046, admeasuring 37¾ X 14¾ hereinafter referred to as the suit property shown red in the site plan annexed vide documents dated 09.05.1994/12.05.1994. The said property was purchased by the plaintiffs with all rights, title and interests from the defendant No.1 for a total consideration of Rs.90000 (Rupees Ninety Thousand Only). That the pursuance of the said sale the defendant No.1 had executed registered will receipt agreement to sell and affidavits in favour of the plaintiff No.2 all dated 09.05.1994. That the plaintiff No.1 has been running a business of glass house in the suit premises since then.'

6. The corresponding para 2 of the written statement to the above amended plaint reads as under:-

'2. That the contents of para 2 are incorrect hence denied. The answering defendants does not dispute the execution of documents for the sale of shop at ground floor at WZ-1672/5, Nangal Raya, New Delhi. However, it is vehemently denied that the answering defendants have sold roof rights over the said shop to the plaintiffs. The plaintiff have no right on the roof of the said shop. That the answering defendants had sold the roof over the said shop to the defendant No.3 vide sale deed dated 28.06.2007.'

7. From the above averments made by the parties, it is clear that right from the beginning, the petitioner was well aware of the execution of the documents as well the site plan annexed with the documents which were executed at the time of sale of shop constructed upto ground floor at WZ-1672/5, Nangal Raya (on the road linking Jail Road and Pankha Road), New Delhi admeasuring $37\frac{3}{4}$ X $14\frac{3}{4}$ and described in the site plan.

8. The learned Trial Court has rightly declined the prayer while observing that the application under Order VIII Rule 1-A of Code of Civil Procedure dated 19th August, 2015 is totally silent about the reason for not filing the site plan at the initial stage or the reason for getting the site plan prepared just before filing the application under Order VIII Rule 1A CPC which was inferred from the fact that the draughtsman visited the site only in July, 2015 for purpose of preparing site plan.

9. The order passed by the learned Trial Court does not suffer from any illegality perversity.

10. The petition is dismissed.

11. No costs.

CM No.23966/2016

Dismissed as infructuous.

MAY 11, 2017/ 'st'

PRATIBHA RANI, J.