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

+ C.R.P. No.159/2011 & CM No. 20656/2011 (for stay).

AJAY SINGHAL & ANR

..... Petitioners

Through: Mr. R.K. Sanghi, Mr. Satyendra
Kumar and Mr. Mohit Bansal, Advs.

Versus

MAHENDER SINGH VOHRA & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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22.08.2017

1. This Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order (dated 5th November, 2011 in Suit No.357/11 of the Court of Civil Judge-02 (West), Delhi) of dismissal of the application of the petitioners / defendants under Order VII Rule 11 of the CPC and passing further orders in the suit.

2. The petition was entertained and vide *ex parte ad interim* order dated 16th November, 2011, while issuing notice of the petition, proceedings before the Trial Court, were stayed. Vide subsequent order dated 29th November, 2011, also *ex parte*, operation of the impugned order was also stayed. The said interim orders continue till date.

3. The order dated 13th March, 2012 in this petition records that the respondents had been served but none had appeared on their behalf. Since then, the matter is being adjourned from time to time and the respondents / plaintiffs have not appeared on any of the dates. Today also none appears for respondent / plaintiffs. However, there being no formal order proceeding *ex parte* against the respondents / plaintiffs, the respondents / plaintiffs are now

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proceeded against *ex parte*.

4. The counsel for the petitioners / defendants has been heard.

5. The counsel for the petitioners / defendants, on enquiry, states that the respondents / plaintiffs have also not been appearing in the suit from which this petition arises but since the proceedings in the suit have been stayed by interim order in this petition, the learned Civil Judge before whom the suit is pending has not dismissed the suit in default of appearance of the respondents / plaintiffs.

6. The respondents / plaintiffs instituted the suit, from which this petition arises, for permanent and mandatory injunction restraining the petitioners / defendants from dispossessing the respondents / plaintiffs from Shop No. B-12-13, Basement upon Plot No.159-160, Transport Centre, Punjabi Bagh, Rohtak Road, New Delhi – 110 035 and for directing the petitioners / defendants to demolish the wall constructed upon the property of the respondents / plaintiffs and to hand over physical possession of the part of the property which had been taken by the petitioners / defendants illegally and unlawfully.

7. The counsel for the petitioners / defendants has argued that property No.159-160, Transport Centre, Punjabi Bagh, Rohtak Road, New Delhi belonged to M/s. Pushpa Builders Ltd. against whom Punjab National Bank (PNB) had initiated proceedings before the Debts Recovery Tribunal (DRT) and the petitioners / defendants have acquired the said property in an auction conducted by the Recovery Officer of the DRT and the petitioners / defendants have been put in possession of the subject property. It is further contended that the respondents / plaintiffs were attempting to take

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possession of the basement but their attempts were thwarted and the suit from which this petition arises was in aid of the said attempts and upon their attempts being thwarted, the respondents / plaintiffs are no longer interested in pursuing the suit. It is contended that the petitioners / defendants are still in possession of the property and the respondent / plaintiffs are not in possession of any part thereof.

8. Though rejection of the plaint was sought on the ground of the suit claim being barred by Sections 34 and 35 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 and under Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and on the ground of the suit being not properly valued for the purposes of court fees and jurisdiction and for the reason of non-joinder of M/s. Om Trans Logistics Ltd. which was the auction purchaser and of which the petitioners / defendants are Directors but I am of the view that the provisions of SARFAESI Act will not be attracted, the contention being of purchase of the property under the provisions of Recovery of Debts Due to Banks and Financial Institutions Act (DRT Act) and Section 18 of the DRT Act would not bar the suit of the present nature. Similarly, once it is the petitioners / defendants who according to the respondents / plaintiffs were disturbing the possession of the respondents / plaintiffs, the question of the suit being bad for non-joinder of M/s. Om Trans Logistics Ltd. and of PNB does not arise. A plaintiff, qua suit for permanent injunction, has absolute discretion to value it at whatever may be deemed appropriate and it appears that there is no merit in the said contention also.

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9. However it appears that the suit from which this petition arises is dead wood inasmuch as the petitioners / defendants claim to be still in possession through their Company and the respondents / plaintiffs who had only sued to restrain the petitioners / defendants from disturbing their possession and for recovery of possession are no longer interested. Supreme Court in ***Shipping Corporation of India Ltd. Vs. Machado Brothers*** (2004) 11 SCC 168 has held that it is the duty of the Court to at the earliest remove such dead suits from the record of the Court.

10. For the said reasons, the petition is allowed and the suit from which this petition arises is dismissed as dead wood.

No costs.

RAJIV SAHAI ENDLAW, J.

AUGUST 22, 2017
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