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

+ C.R.P. 107/2016

PRIYANKA BATRA

..... Petitioner

Through: Mr. Pradeep K. Bakshi, Adv.

Versus

SANDEEP GROVER

..... Respondent

Through: Mr. Dinesh Goyal, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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15.09.2017

1. This petition, filed as RSA No.59/2016 and ordered on 15th July, 2016 to be converted to a Revision Petition, impugns the judgment [dated 16th November, 2015 in RCA No.12/2013 of the Court of Additional Senior Civil Judge, Central District, Tis Hazari Courts, Delhi] of dismissal of an appeal preferred by the petitioner against the order dated 18th January, 2012 of the Court of Administrative Civil Judge (ACJ) (North), Tis Hazari Courts, Delhi in M No.17/2011 of dismissal of the application under Order IX Rule 4 of the Code of Civil Procedure, 1908 (CPC) filed by the petitioner/plaintiff for restoration of suit No.84/10/C dismissed in default on 2nd August, 2011.
2. Notice was issued and the counsel for the respondent has been appearing.
3. The counsels have been heard.
4. The Revision Petition arises from a suit filed by the petitioner/plaintiff against the respondent/defendant for (a) declaration that the deed of cancellation of the registered special power of attorney was null and void and that the registered special power of attorney in favour of the

petitioner/plaintiff is valid; and, (b) for permanent injunction restraining the defendant from selling, alienating or parting with possession of land measuring approximately 17 Bighas comprised in Khasra No.169, 180, 181, 186 & 187 as situated at National Highway No.8 at Gram Janak Singh Pura, District Alwar, Rajasthan.

5. The suit was accompanied with an application for interim relief and upon the interim relief being not granted by the Civil Judge, the petitioner/plaintiff preferred an appeal and which was pending before the Senior Civil Judge. The learned Senior Civil Judge, vide order dated 20th July, 2011, disposed of the appeal by directing the parties to appear before the Suit Court on 2nd August, 2011 for disposal of the application for interim relief.

6. On 2nd August, 2011, though the counsel for the respondent/defendant appeared but none appeared for the petitioner/plaintiff and resultantly the suit was dismissed in default of appearance of petitioner/plaintiff.

7. Though the application for restoration should have been under Order IX Rule 9 of the CPC but titling the application as under Order IX Rule 4 of the CPC, the application was filed on 17th August, 2011 and which was dismissed by the learned Civil Judge vide order dated 18th January, 2012 *inter alia* for the reason that the application was not signed by duly authorised person.

8. Aggrieved therefrom, the petitioner/plaintiff preferred the appeal aforesaid along with an application for condonation of delay of 24 days in filing thereof and an application under Section 14 of the Limitation Act,

1963. The latter application was necessitated because of the appeal having been first filed in District South-West, Dwarka Courts.

9. Vide impugned judgment/order dated 16th November, 2015, the applications under Section 5 & 14 of Limitation Act as well as the appeal, also on merits, have been dismissed.

10. Considering the liberal principles applicable to restoration of suits dismissed in default and considering the fact that the petitioner/plaintiff has been pursuing the proceedings, I have straightaway enquired from the counsel for the respondent/defendant as to why this petition should not be allowed.

11. The counsel for the respondent/defendant draws attention to the order dated 7th July, 2006 in CM(M) No.996/2006 arising from the same suit and in which, upon this Court enquiring from the counsel for the petitioner/plaintiff whether not the appropriate remedy for the petitioner/plaintiff was to file a suit for specific performance of agreement to sell, the counsel for the petitioner/plaintiff stated that it was being filed shortly. It is further informed that a suit for specific performance was indeed filed in the Court at Behror, Rajasthan but the same has been dismissed. The counsel for the respondent/defendant contends, that after the dismissal of the suit for specific performance, the question of maintainability of the suit from which this petition arises, does not arise.

12. I have enquired from the counsel for the respondent/defendant, whether not the aforesaid contention can be considered only after restoring the suit.

13. The counsel for the respondent/defendant has then, on the matter of

restoration contended (i) that the petitioner/plaintiff in the application for restoration gave the reason of a wrong date of 12th August, 2011 before the Appellate Court instead of the date of 2nd August, 2011 before the Suit Court being noted by the clerk of the counsel for the petitioner/plaintiff on 20th July, 2011 and on not finding the appeal in the cause list of the Appellate Court on 12th August, 2011, enquiries having been made and whereafter the application was filed; (ii) that a bare perusal of the page of the diary of 20th July, 2011 maintained by the counsel for the petitioner/plaintiff shows that the date was correctly noted as 2nd August, 2011 and by over-writing had been changed to 12th August, 2011; (iii) that the diary of 2nd August, 2011 was not shown and adverse inference has to be drawn from the fact that the case must have been entered on 2nd August, 2011; (iv) that the petitioner/plaintiff *malafidely* instituted the appeal against the dismissal of the application for restoration of suit in the Dwarka Courts when the suit was pending in the Tis Hazari Courts and by giving an address of the respondent/defendant within the jurisdiction of Dwarka Courts, when the address given in the suit was correct; (v) that thus, in the impugned judgment, it has been correctly recorded that no case for allowing the application under Section 14 of the Limitation Act was made out and resultantly, the appeal was dismissed as time barred.

14. Per contra, the counsel for the petitioner / plaintiff has contended i) that it is not as if address given within the jurisdiction of Dwarka Court was not of the respondent / defendant; ii) that there are several other litigations between the parties and the address of Dwarka was taken from the memo of parties in another litigation; iii) that an appeal filed by the petitioner /

plaintiff against the order of dismissal of the suit for specific performance is pending consideration.

15. As far as the filing of appeal in Dwarka Courts is concerned, I may also record that though the suits instituted in Tis Hazari Courts prior to bifurcation were continued in Tis Hazari Courts but the appeals etc. arising therefrom are being filed in the appropriate district. Thus, merely from the filing of the appeal in the Dwarka Courts inspite of the suit having been of Tis Hazari Courts, no adverse inference of *mala fides* can be drawn.

16. I am of the view that though the aforesaid facts entitle the respondent / defendant to heavy costs for restoration, but do not make the petitioner / plaintiff liable for dismissal of his suit in default.

17. The petition is thus allowed.

18. The judgment dated 16th November, 2015 is set aside. The appeal preferred by the petitioner /plaintiff against the order of dismissal of the application for restoration of suit to its original position is allowed and the order dated 18th January, 2012 of the Civil Judge dismissing the application for restoration is set aside. Resultantly, the suit is restored to its original position as prior to dismissal in default on 2nd August, 2011.

19. However the aforesaid is subject to the petitioner / plaintiff paying costs of Rs.50,000/- to the counsel for the respondent / defendant on or before 30th September, 2017.

21. Upon the costs being paid, the parties to appear before the ACJ (North), Tis Hazari Courts, Delhi on 25th October, 2017.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 15, 2017/‘gsr’..

C.R.P. 107/2016

Page 5 of 5