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

\+ CM(M) 949/2017

ARVIND KUMAR SHUKLA ..... Petitioner

Through: Mr. Amit Shukla, Adv.

Versus

M/S SURI PROPERTIES & ORS ..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% 01.09.2017

CM No.31846/2017 (for exemption)

1. Allowed, subject to just exceptions.

2. The application is disposed of.

CM(M) 949/2017, CM No.31845/2017 (for stay) & CM No.31847/2017 (for condonation of 106 days delay in re-filing the petition)

3. This petition under Article 227 of the Constitution of India impugns the orders [dated 7th December, 2016 and 19th January, 2017 in RC No.5643/2016 of the Court of Senior Commercial Judge (SCJ)-cum-Rent Controller (RC), New Delhi District, Patiala House Courts, New Delhi] of closure of the evidence of RW3 being the witness of the petitioner and of dismissal of the application filed by the petitioner for setting aside of the order dated 7th December, 2016.

4. The petition under Article 227 of the Constitution of India is accompanied with an application for condonation of delay of 106 days in re-filing thereof.

5. Though the bar for condonation of delay in re-filing has been pegged considerably lower than the bar for condonation of delay in filing but in the facts of the present case, the said delay is found to be strategic.

6. The proceeding from which this petition arises is a petition filed by the respondent No.1 M/s Suri Properties through its proprietor Sh. B.S. Suri for eviction of the petitioner and respondents no.2&3 viz. Praveen Kumar and Gulshan Kumar from property No.1/24, Regal Building, Connaught Place, New Delhi. The petition for eviction was filed as far back as in the year 2010 with the averment that though the premises were let out to respondents no.2&3 viz. Praveen Kumar and Gulshan Kumar but had been unauthorizedly sub-let to the petitioner, being an advocate.

7. The impugned order dated 7th December, 2016 closing the evidence of RW3 (the counsel for the petitioner on enquiry informs that RW3 is the petitioner himself) records that vide order dated 3rd November, 2016, last and final opportunity was given to the parties for cross-examination of RW3 as the eviction petition was pending since the year 2010 and was one of the oldest matters of that Court; that none had appeared for the petitioner despite repeated calls; that no ground was made out for granting further opportunity to RW3 for his cross-examination since he had not appeared for cross-examination despite last and final opportunity.

8. The impugned order dated 19th January, 2017 records that the explanation given by the petitioner (RW3) for non-appearance on 7th December, 2016 was the wrong noting in the diary of the next date of

hearing as 17th December, 2016 in place of 7th December, 2016; that save for the said bald averment, the diary was not produced to show and demonstrate such wrong noting of the date and no explanation was furnished for not filing the relevant pages of the diary maintained by the petitioner, an advocate, to support the said contention; moreover it was not the first time that the right of the petitioner (RW3) to lead evidence was closed; even vide order dated 6th August, 2015, the right of the petitioner to lead evidence was closed; however thereafter the petitioner filed an application for recall of the said order and which was allowed; that vide order dated 7th December, 2016 though petitioner was also directed to file evidence by way of affidavit of remaining witnesses and to supply a copy thereof but the said direction had also not been complied with; that the term "last and final opportunity" had lost its meaning to the petitioner and the petitioner was casually asking for date after date and last and final opportunity after last and final opportunity, making mockery of the sanctity of the judicial orders; that as per the administrative directions of this Court, the oldest matters were to be disposed of expeditiously but the conduct of the petitioner was interfering therewith.

9. From the aforesaid reasoning, it appears that the petitioner is availing of opportunity to lead his evidence now for at least more than two years. Not only the counsel for the petitioner has not rebutted the said fact during the arguments but the petitioner has also not placed before this Court the order sheets of the Court to demonstrate the opportunities availed by the petitioner for leading his evidence. The only inference is that the said order

sheets have not been produced as the same would not have come to the rescue of the petitioner.

10. The argument of the counsel for the petitioner today also is that "one opportunity" be given.

11. This petition has come up today for the first time after more than seven months of the order closing evidence of RW3. If the petitioner had any motive, other than dialatory, this petition ought to have been got listed immediately and orders obtained.

12. The counsel for the petitioner on enquiry states that now the petition for eviction is posted for final arguments on 16th September, 2017.

13. It appears that this petition has been got listed today, to derail hearing of final arguments. The delay on the part of the petitioner in pursuing this petition is also fatal to the case if any of the petitioner.

14. There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 01, 2017
'gsr'..