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

C.R.P. 108/2017

SATVEER SINGH & ANR Petitioners

Through: Petitioners-in-person.

Versus

JATINDER KAUR & ORS Respondents

Through: None.

AND

+ C.R.P. 107/2017

SATVEER SINGH & ANR Petitioners

Through: Petitioners-in-person.

Versus

JAGDEEP KAUR MEHR & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **21.08.2017**

C.R.P. 108/2017 & CMs No.29443/2017 (u/O I R-10 CPC) & 29444/2017 (u/O III R-5 CPC)

1. Though notice of this Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) has been ordered to be issued and the matter is listed next on 11th October, 2017 for service of the respondents but the matter is listed today on CM No.29443/2017 under Order I Rule 10 of CPC and CM No.29444/2017 under Order III Rule 5 of CPC filed by the petitioners, but considering the nature of the petition, the petitioners, who on the earlier date had appeared in person and today also appear in person, have been heard on the petition itself.

2. The petition has been filed impugning the order [dated 6th April, 2017 in Civ DJ No.608003/2016 of the Court of Additional District Judge-04 (ADJ), West District, Tis Hazari Courts, Delhi] of, after allowing the application of the petitioners/plaintiffs under Order VI Rule 17 of CPC, posting the matter to 16th August, 2017 for completion of pleadings i.e. for filing of the written statement within stipulated time and filing of the replication within 15 days thereafter.

3. The grievance of the petitioners/plaintiffs is, that though the respondents/defendants had not filed written statement for a period of eight years since after the institution of the suit but the learned ADJ has allowed the respondents/defendants to file the written statement.

4. It is recorded in the impugned order and also in the memorandum of petition that though the suit was instituted way back in the year 2009 but the application for amendment of the plaintiff under Order VI Rule 17 which was allowed vide the impugned order was also filed in the year 2009 itself, before the respondents/defendants were served and that it is the application for amendment which had remained pending for over eight years.

5. On enquiry, the petitioner No.2 appearing in person states that the respondents/defendants have not impugned the order allowing the amendment.

6. Once the application for amendment of the plaint was pending at the stage when the respondents/defendants were served, the question of the respondents/defendants filing any written statement to the plaint as existing did not arise till the application for amendment was disposed of. In fact, the

petitioners/plaintiffs in this petition have stated that the respondents/defendants did not file any reply to the application under Order VI Rule 17 of CPC of the petitioners/plaintiffs and the petitioners/plaintiffs filed application under Order VIII Rule 10 of CPC for closing the right of the respondents/defendants to file reply to the application under Order VI Rule 17 of CPC.

7. In the aforesaid scenario, no error is found in the order dated 6th April, 2017 insofar as permitting the respondents/defendants to, within the stipulated time, file written statement to the amended plaint which was taken on record on 6th April, 2017 only.

8. There is thus no merit in the Revision Petition itself which itself in fact is found to be not maintainable and the need to consider the applications under Order I Rule 10 of CPC for deletion of the names of respondents/defendants No.3,4&5 who have been proceeded against *ex-parte* before the Suit Court and under Order III Rule 5 of CPC for service of the remaining respondents/defendants through their counsel before the Suit Court, does not arise.

9. C.R.P. No.108/2017 is dismissed. **No costs.**

C.R.P. 107/2017 & CMs No.29149/2017 (u/O I R-10 CPC) & 29150/2017 (u/O III R-5 CPC)

10. Notice of this petition was also issued and similar applications under Order I Rule 10 and under Order III Rule 5 of CPC have been filed herein also. This petition also impugns the order dated 6th April, 2017 in Civ DJ No.610054/2016 of the Court of the same ADJ but in a different suit. Vide the order impugned, the delay on behalf of the respondent/defendant

No.3 and respondent/defendant No.2 in filing the written statement was condoned. The learned ADJ has noted that the written statement by respondent/defendant No.3 was filed within a period of 90 days and the written statement by the respondent/defendant No.2 was filed within the extension of time granted by the learned ADJ.

11. The petitioner No.2 has argued that the respondent/defendant No.3 filed the written statement not within 90 days as recorded by the learned ADJ but beyond 90 days.

12. However, on enquiry, as to when was the respondent/defendant No.3 served, the petitioner No.2 states that the respondent/defendant No.3 was served sometimes in 2008 but he is unable to give the date and the exact date can be found out from the Trial Court record by requisitioning the same to this Court.

13. I have perused the memorandum of the petition and do not find the petitioners to have therein also stated the date of service of respondent/defendant No.3.

14. The nature of the suit subject matter of C.R.P. No.107/2017 is the same as the nature of the suit subject matter of C.R.P. No.108/2017. Both the suits are for setting aside of a sale deed, according to the petitioners/plaintiffs on the basis of an illegal and unregistered relinquishment deed.

15. In the aforesaid circumstances, when it is the same sale deed which is subject matter of both the suits and C.R.P. No.108/2017 has been dismissed, it is deemed appropriate to not interfere with the order, even otherwise

Discretionary, of the learned ADJ condoning the delay on the part of the respondents/defendants No.2&3 in suit subject matter of C.R.P. No.107/2017 in filing the written statement.

16. Resultantly, C.R.P. No.107/2017 is also dismissed and the need to consider the applications under Order I Rule 10 of CPC and under Order III Rule 5 of CPC moved therein also does not arise.

17. However, considering the fact that the suits are already stated to be nine years old, the learned ADJ before whom the suits are now pending is requested to deal with the suits expeditiously as per their vintage.

18. The dates of 11th October, 2017 in both the petitions are cancelled.

RAJIV SAHAI ENDLAW, J.

AUGUST 21, 2017

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