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

+ CM(M) 634/2017, CM No.21212/2017 (for stay)

PROF. K.L. SHARMA (DECEASED) THROUGH  
PROF. K.L. SHARMA CHARITABLE TRUST ..... Petitioner  
Through: Mr.Rajeev Saxena, Mr. Rachit  
Sahney, Advocates

Versus

OM PARKASH SHARMA (DECEASED)  
THROUGH LRs & ANR ..... Respondents  
Through:

**CORAM:**  
**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**  
**15.11.2017**

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1. This petition under Article 227 of the Constitution of India impugns the order [dated 20<sup>th</sup> February, 2017 in CSDJ No.9651/2016 of the court of ADJ-14, (Central), Tis Hazari Courts, Delhi] of dismissal of the application filed by the petitioners/defendants for review of the order dated 9<sup>th</sup> October, 2014.
2. The counsel for the respondents/plaintiffs appeared on advance notice when the matter came up first before this Court on 29<sup>th</sup> May, 2017 and the matter has been adjourned from time to time.
3. The counsel for the petitioners/defendants and the respondent No.2/ plaintiff, an advocate appearing in person, appear for the respondents/ plaintiffs and the counsels have been heard.

4. Attention of the counsel for the petitioners/defendants has been invited to ***Land Acquisition Officer, Andhra Pradesh vs. Ravi Santosh Reddy*** (2016) 4 SCC 238 which lays down that no revision lies against an order of dismissal of application for review/recall of an earlier order and the main order is to be challenged and to the order dated 19<sup>th</sup> September, 2017 in CM(M) No.1028/2017 titled “***Fashion to Faishon Exports vs. MVM Enterprises*** of this Court, extending the said principle to a petition under Article 227 of the Constitution of India.

5. The counsel for the petitioners/defendants states that though in the title of the petition, challenge has been stated only to the order dated 20<sup>th</sup> February, 2017, but in the prayer paragraph, the setting aside of the order dated 9<sup>th</sup> October, 2014 has also been sought.

6. Vide order dated 9<sup>th</sup> October, 2014, the defence of the petitioners/defendants to the Suit was struck off for the reason of non-payment of costs of Rs.3,000/- imposed on the petitioners/defendants by an earlier order.

7. The challenge to the order dated 9<sup>th</sup> October, 2014, by this petition filed after nearly three years therefrom, is highly belated and suffers from laches and acquiescence.

8. The counsel for the petitioners/defendants states that the petitioners/defendants challenged the order vide which costs of Rs.3,000/- were imposed on the petitioners/defendants till the Supreme Court and applied for review, only after being finally unsuccessful in the challenge to the order imposing costs, till the Supreme Court.

9. On enquiry, it is informed that the Suit from which this petition arises has been filed for recovery of Rs.4,60,000/- and the Suit is pending since the

year 1995.

10. The respondent No.2/plaintiff states that till date, the recording of plaintiff's evidence even has not started.

11. The counsel for the petitioners/defendants offers to, besides the costs of Rs.3,000/-, pay further costs of Rs.50,000/- to the respondents/plaintiffs to have the default set aside.

12. The respondent No.2/plaintiff is not agreeable thereto and wants to argue the merits of the Suit and the defence of the petitioners/defendants therein.

13. The same cannot be permitted in exercise of jurisdiction under Article 227 of the Constitution of India against the order dated 9<sup>th</sup> October, 2014.

14. Considering the fact that it is the contention of the respondent No.2/plaintiff himself that the recording of evidence has not begun till now and further considering the fact that after the defence of the petitioners/defendants was struck off, no substantial proceedings have taken place in the Suit, the offer of the petitioners/defendants is found to be reasonable.

15. Subject to the petitioners/defendants paying, by bank draft in the name of respondent No.2/plaintiff, a sum of Rs.53,000/- on or before 27<sup>th</sup> November, 2017 when the Suit from which this petition arises is stated to be listed next before the Suit Court, the order striking off the defence of the petitioners/defendants shall stand set aside and the petitioners/defendants shall be relegated to the position as without their defence having been set aside.

16. Needless to state that if the condition aforesaid is not complied with, the order striking off the defence shall remain and this petition shall be

deemed to have been dismissed.

17. The petition is disposed of.

**CM 30063/2017 (of the respondent u/S 340 of Cr.PC)**

18. This application has been filed with the averment that the petitioners/defendants claim Prof. K.L. Sharma to have, in his lifetime vide his Will, created the petitioner/defendant No.1 K.L. Sharma Charitable Trust. It is argued that the Will could not have come into operation in the lifetime of Prof. K.L. Sharma and the story of existence of petitioner/defendant No.1 K.L. Sharma Charitable Trust is false.

19. It has been held in *Vishal Kapoor vs. Sonal Kapoor* 2014 SCC OnLine Del 4484 and *Punjab Tractors Ltd. vs. International Tractors Ltd.* ILR (2010) II Delhi 352 that an application under Section 340 of the Cr.PC is not maintainable at the interim stage.

20. It will be open to the respondents/plaintiffs to take appropriate steps in the Suit, if called for, after evidence on facts has been recorded.

21. With the aforesaid, the application is dismissed.

**RAJIV SAHAI ENDLAW, J.**

**NOVEMBER 15, 2017**

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