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

+ CM(M) No.772/2017 & CM No.26165/2017 (for stay).

JASPAL SINGH KHOKHAR & ANR

..... Petitioners

Through: Mr. Siddharth Yadav with Mr. Wasim
Ashraf, Advs.

versus

INDERJEET SINGH KHOKHAR & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **26.07.2017**

CM No.26166/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

CM(M) No.772/2017 & CM No.26165/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order dated 13th April, 2017 in CS No.12676/16 (of the Court of Additional District Judge-01 (West), Tis Hazari Courts, Delhi) filed by the respondent-1 / plaintiff for partition of immoveable property.
4. Vide the aforesaid impugned order three things have been done.
 - (i) The legal representatives of the deceased defendant no.4 in the suit have been impleaded as parties.
 - (ii) The suit from which this petition arises has been consolidated with two other suits pending before the same learned Additional District Judge pertaining to the same property.

(iii) The applications of the defendants no.3&5 for setting-aside of the order proceeding *ex parte* against them has been allowed.

5. The petitioners / defendants no.1&2 have not impugned all the aforesaid aspects of the order and have impugned only the part of the order by which the application of the defendants no.3&5 in the suit under Order IX Rule 7 of the Code of Civil Procedure, 1908 (CPC) for setting-aside of the order proceeding *ex parte* against them has been allowed.

6. The petitioner / defendants no.1&2 having not challenged the order insofar as of consolidation and of impleadment of the legal heirs of the deceased defendant no.4 and permitted them to file written statement, it has been enquired from the counsel for the petitioners / defendants no.1&2 as to what prejudice will be caused to the petitioners / defendants no.1&2 if the order allowing application under Order IX Rule 7 of the CPC is to remain inasmuch as consolidated issues have been ordered to be framed in the suits.

7. During the hearing it has also transpired that the defendant no.3 had filed written statement and since no substantial proceedings have taken place in the suit thereafter, the defendant no.3 can always join the proceedings and the order setting-aside *ex parte* against defendant no.3 is of no consequence.

8. Faced therewith the counsel for the petitioners / defendants no.1&2 withdraws the petition with liberty to file a fresh petition also impugning other parts of the order.

9. Dismissed as withdrawn with liberty aforesaid on the condition that the petitioners / defendants no.1&2, in the fresh petition if any filed, disclose the factum of having filed this petition and also annex copy of this order.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 26, 2017
'pp'..

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