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

+ CM(M) 768/2017 & CM No.26036/2017 (for stay)

BIMLA AND ANR Petitioners

Through: Mr. Pawan Bahl & Mr. Sanjay Goel,
Advts.

Versus

SIRAJUDDIN (DECEASED) THROUGH LRs Respondent

Through: None.

AND

CM(M) 770/2017 & CM No.26068/2017 (for stay)

CHAKRA SUDERSHAN Petitioner

Through: Mr. Pawan Bahl & Mr. Sanjay Goel,
Advts.

Versus

SIRAJUDDIN (DECEASED) THROUGH LRs Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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25.07.2017

**CM No.26037/2017 in CM(M) 768/2017 and CM No.26069/2017 in
CM(M) 770/2017 (both for exemptions)**

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

CM(M) 768/2017 & CM(M) 770/2017

3. The petitions, both under Article 227 of the Constitution of India, impugn identical orders of the same learned Civil Judge-1, Central District, Tis Hazari Courts, Delhi in Suit Nos.370/2014 and 371/2014 subject matter of CM(M) 768/2017 and CM(M) 770/2017 respectively.

4. In both the petitions, the challenge is to the order dated 17th August,

2015 of dismissal of the application filed by the petitioners / defendants under Order XVIII Rule 17 of the CPC for opportunity to lead evidence.

5. Though it is stated in the petitions that the petitioners / defendants had filed an application seeking review of the order dated 17th August, 2015 and which application seeking review was dismissed only on 24th May, 2017 but the same cannot take away the fact that the challenge to the order dated 17th August, 2015 has been made after nearly two years.

6. Supreme Court recently in *Sasi Vs. Aravindakshan Nair* (2017) 4 SCC 692 has held that review applications are to be decided by the Courts immediately.

7. The result is that the suits, which vide impugned order dated 17th August, 2015 were posted for final arguments on 8th October, 2015, are still pending.

8. Though the petitions are liable to be dismissed on the ground of delay alone, particularly when no case for the petitioners / defendants *bona fide* pursuing the review applications is made out as no ground for seeking review is found to have been made out in the applications, but the counsel for the petitioners / defendants has also been heard on merits.

9. It is not disputed (a) that the suits were listed for evidence of the petitioners / defendants on 3rd March, 2007 when adjournment was sought by the petitioners / defendants and which was granted subject to cost of Rs.300/- and the suits posted to 9th May, 2007 for evidence of the petitioners / defendants; and, (b) on 9th May, 2007 none appeared on behalf of the petitioners / defendants despite repeated calls and even the

witnesses of the petitioners / defendants were absent and resultantly the evidence of the petitioners / defendants was closed on 9th May, 2007.

10. The counsel for the petitioners / defendants argues that the earlier counsel for petitioners / defendants on 3rd March, 2007 had wrongly noted the next date on 29th May, 2007 instead of 9th May, 2007; that on coming to know on 29th May, 2007 of the said error, on 3rd July, 2017, an application under Order IX Rule 7 CPC was filed in both the suits and of which notice was ordered to be issued for 1st October, 2007; on 1st October, 2007, the said applications were withdrawn with permission to move the appropriate application under the relevant provision and whereafter on 27th November, 2007 the applications, against the order dated 17th August, 2015 of dismissal of which these petitions have been preferred, were filed.

11. The learned Civil Judge in the order dated 17th August, 2015 has reasoned, that there was no plausible explanation had been furnished for the inordinate delay from 29th May, 2007 to 27th November, 2007 in making the application for recalling of the order closing the evidence.

12. The counsel for the petitioners / defendants has sought to furnish an explanation for the said delay by contending that though on 3rd July, 2007 the application was filed but under wrong provision of law; the earlier counsel is sought to be blamed.

13. The counsel is but an agent of the litigant and it is found that the litigants, while impugning such orders, are always averring the negligence of the earlier counsel, merely by engaging another counsel.

14. The working of the judicial system cannot be permitted to come to a

standstill by such grounds being taken and of which there is no basis. As in other cases, in this case also the allegations are made against earlier counsel without giving an opportunity to the earlier counsel to respond. No action is taken against the earlier counsel for the negligence if any. The adversary in a litigation cannot be caused prejudice by such negligence, whether it be of the litigant or of the agent of the litigant. It cannot be lost sight of that it is after all the litigant who chooses the advocate and if chooses an advocate who is not competent to do the case, has to suffer therefor.

15. Supreme Court in ***Salil Dutta Vs. T.M. and M.C. Private Ltd.*** (1993) 2 SCC 185 held that an Advocate is the agent of the party and his acts and statements made within the limits of authority given to him are the acts and statements of the principal i.e. the party who engaged him. It was further held that though in certain situations the Court may, in the interest of justice set-aside dismissal order or an *ex-parte* order notwithstanding the negligence and / or misdemeanour of the Advocate, where it finds that the client was an innocent litigant, but there is no such absolute rule that a party can disown its Advocate at any time and seek relief; no such absolute immunity can be recognised; such an absolute rule would make the working of the system extremely difficult. It was further held that putting the entire blame upon the Advocate and trying to make it out as if the litigant was totally unaware of the proceedings is a theory which cannot be accepted.

16. I have also in order dated 23rd August, 2016 in CS(OS) No.435/2000 titled ***Tribal Co-Operative Marketing Development Federation of India Ltd. Vs. Kishan Industries***, following the aforesaid and a host of other

judgments held that the litigant who has chosen the Advocate is equally guilty of negligence and not following up the case and cannot be permitted to put the entire blame on the Advocate. Reference in this regard can also be made to *Samusunisha Begaum Vs. Vishnukumar Ambelal Patel* MANU/GJ/0255/2012 elaborately dealing with the issue.

17. There is no such principle which allows the defendant to be negligent if the plaintiff has been negligent or which allows the defendant the same amount of opportunities as the plaintiff has enjoyed. In fact the successive Chief Justices of this Court have written letters reminding the judicial officers not to give adjournment on mere asking and this Court sitting in supervisory jurisdiction, by judicial order, cannot undo the orders which have been made by the said Judicial Officers in accordance with the administrative instructions received by them.

18. The counsel for the petitioners / defendants argues that the respondent / plaintiff also delayed leading their evidence and that conduct of the suits by the respondent / plaintiff is replete with negligence. It is further argued that in any case the suits have been pending for long.

19. Thus, on merits also no reason for interfering with the orders dated 17th August, 2015 is made out.

20. Another argument of the counsel for the petitioners / defendants is that the affidavits by way of examination-in-chief of seven witnesses of the petitioners / defendants were filed on 22nd July, 2005. On that ground, it is stated that an opportunity should be given.

21. Once the petitioners / defendants are found to be in default, merely for the reason of having filed the affidavits, the said default cannot be overlooked. Rather, therefrom it appears that the suit was pending for petitioners / defendants evidence since 2005 and that further reinforces the order refusing to recall the earlier order of closing of the evidence of the petitioners / defendants.

22. I may also notice that the suits are of the years 1995 and 1996.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 25, 2017

‘gsr’/pp..