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

+ CM(M) 712/2017

BALBIR SINGH

..... Petitioner

Through: Mr. Pradeep Kumar Arya and Mr. Raj
Karan Sharma, Advs.

Versus

RAMESH PARKASH & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% 17.07.2017

CM No.24727/2017 (for exemption)

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

CM(M) 712/2017 & CM No.24728/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order (dated 3rd December, 2015 of the Additional Senior Civil Judge (ASCJ) (West), Delhi) of dismissal of an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (CPC) filed by the petitioner in appeal being RCA No.17/2012 preferred by the petitioner/plaintiff against the order of dismissal of his suit.
4. The petition also impugns the order dated 24th April, 2017 of dismissal of an application filed by the petitioner/plaintiff for review of the order dated 3rd December, 2015.

CM(M) 712/2017

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5. The counsel for the petitioner/plaintiff, on enquiry, states that the appeal is now listed before the ASCJ on 19th July, 2017.
6. Supreme Court recently in **Sasi Vs. Aravindakshan Nair** (2017) 4 SCC 692 has held that applications for review have to be disposed of at the earliest. It is not understandable, as to why the application for review in this case remained pending for over one and a half years.
7. Rather, it is also unfortunate inspite of this Court in **Savitri Devi Vs. Gayatri Devi** 166 (2010) DLT 595 holding that application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (CPC) are to be taken up for adjudication along with final arguments in the appeal, the Advocates continue to press the said applications before final arguments and the same continued to be decided resulting in challenges to the said orders and resultant delay in disposal of the appeals.
8. Not only so, the ASCJ has also reasoned that the application of the petitioner/plaintiff before the Suit Court under Order XVIII Rule 17 CPC for proving the same document, for proving which the application under Order XLI Rule 27 of CPC was filed, had been dismissed by the Suit Court.
9. The counsel for the petitioner/plaintiff does not dispute the said fact.
10. If that be the case, then the application under Order XLI Rule 27 of CPC was misconceived for that reason as well. It was open to the petitioner/plaintiff to, under Order XLIII Rule 1A of the CPC, in appeal also challenge the order of the Trial Court of dismissal of the application under Order XVIII Rule 17 of CPC and if the ASCJ as Appellate Court found any merit therein, then the appeal would have been allowed by setting aside the

decree of the Suit court and by granting an opportunity to the petitioner/plaintiff to lead evidence qua which the applications under Order XVIII Rule 17 before the Suit Court was dismissed.

11. In fact, the petitioner/plaintiff has also failed to place before this Court the order sheets from which it could have been gathered, whether the dismissal by the Suit Court of the application of the petitioner/plaintiff under Order XVIII Rule 17 of CPC was erroneous or not.

12. It is also not known, whether the document now sought to be proved is relevant. The suit filed by the petitioner/plaintiff is informed to have been only for permanent injunction restraining the respondents/defendants from forcibly dispossessing the petitioner/plaintiff from an immovable property. The law laid down by the Supreme Court in **Anathulla Sudhakar Vs. P. Bucha Reddy** (2008) 4 SCC 594 is that in such a suit for injunction simplicitor, the question of title are not to be gone into.

13. The document sought to be proved is the report of Forensic Science Laboratory (FSL) qua signatures on documents of title of immovable property.

14. The relevance of the same is not understandable in a suit for injunction simplicitor.

15. The appeal itself is informed to be listed before the learned ASCJ on 19th July, 2017. It is felt that issuing notice to the respondents/defendants of this appeal at this stage would further delay the disposal of the appeal.

16. This petition is accordingly disposed of recording all the aforesaid and with liberty to the ASCJ to, if on the basis of what is observed herein any

corrective steps are required to be taken while finally disposing of the appeal, take the same.

Copy of this order be given *dasti* under the signatures of the Court Master to the counsel for the petitioner.

RAJIV SAHAI ENDLAW, J.

JULY 17, 2017
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