

\$~63

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

+ CM(M) No.747/2017

SATISH KUMAR

..... Petitioner

Through: Mr. S.C. Sagar and Mr. Chand Ravi,
Advs.

Versus

UMED SINGH SEHRAWAT

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **21.07.2017**

CM No.25545/2017 (for exemption)

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

CM(M) No.747/2017 & CM No.25544/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order dated 21st April, 2017 in CS No.58172/2016 of the Court of Additional District Judge (ADJ)-01, New Delhi District, Patiala House Courts, New Delhi) of deferring the disposal of the application filed by the petitioner/defendant under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) to the stage of final arguments.
4. The learned ADJ on 21st April, 2017 also gave an opportunity to the petitioner/defendant to argue the application under Order VII Rule 11 CPC but the counsel for the petitioner/defendant sought adjournment. It was in this circumstance that the order impugned followed.

5. Finding the conduct of the petitioner/defendant to be dilatory, I have asked the counsel for the petitioner/defendant to at least disclose to this Court that there is any merit in the plea taken under Order VII Rule 11 of CPC.
6. The counsel for the petitioner/defendant has first argued that the suit filed by the respondent/plaintiff and from which this petition arises, is for the reliefs of declaration and recovery of possession of immovable property and is barred by time as provided in Article 59 to the Schedule to the Limitation Act, 1963.
7. Attention of the counsel for the petitioner/defendant has been drawn to the dicta of this Court in Ashok Kumar Vs. Rustam 227 (2016) DLT 385, (SLP preferred whereagainst being SLP(C) No.14543/2016 was dismissed) holding that once the relief of declaration is coupled with the relief of possession, the governing Article is that governing the law of limitation for the relief of possession and not Article 59 or other Articles in Parts III & IV of the Schedule pertaining to the relief of declaration.
8. It has thus been enquired from the counsel for the petitioner/defendant as to which is the Article of the Schedule to the Limitation Act that applies to the relief of possession.
9. The counsel for the petitioner/defendant states that he has not prepared from the said aspect and again seeks adjournment.
10. The other ground urged for rejection of the plaint is of *res judicata*. However, the judgment in the earlier proceeding on the basis of which the plea of *res judicata* is sought to be taken has also not been filed.

11. The only inference can be that the petitioner/defendant has no merit in the application and is using the application under Order VII Rule 11 of CPC and adjournments therein only to delay the disposal of the suit.
12. Subject to the petitioner/defendant depositing costs of Rs.20,000/- with the Delhi High Court Bar Association Lawyer's Social Security and Welfare Fund, New Delhi, it is deemed appropriate to give an opportunity to the counsel for the petitioner/defendant to prepare.
13. List on 20th September, 2017.
14. It is made clear that no passover / adjournment will be given on that date.
15. It is also made clear that pendency of this petition shall not be a ground for adjournment of the proceedings in the suit.
16. At this stage, the counsel for the petitioner/defendant states that he withdraws the petition.
17. Dismissed as withdrawn.
18. It is made clear that the Trial Court at the stage of final arguments shall decide the plea uninfluenced by any observation in this order.
19. It is also made clear that the petitioner/defendant having withdrawn the petition is not required to pay the costs.

RAJIV SAHAI ENDLAW, J.

JULY 21, 2017
'bs'..