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

+ CM(M) No. 738/2015 & CM No.14906/2015 (for stay).

DR. ARUN NIRULA Petitioner

Through: Mr. Ravi Gupta, Sr. Adv. with Mr.
Dhruv Madan, Adv.

Versus

U.S. BAL (THROUGH LRS) & ANR Respondents

Through: Mr. Vivek B. Saharya, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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06.07.2017

1. This petition under Article 227 of the Constitution of India impugns the order dated 6th April, 2015 of the learned Civil Judge of dismissal of the application of the petitioner / defendant under Order XIII of the Code of Civil Procedure, 1908 (CPC) for filing additional documents at the stage after the evidence of the respondents / plaintiffs stood concluded and for attaching the file of another suit between the parties which has since been withdrawn by the respondents / plaintiffs and reading the evidence in the said file as evidence in the suit.

2. The petition was entertained and notice thereof issued. Vide subsequent order dated 20th January, 2016 the Trial Court was requested to adjourn the hearing and which interim order has continued resulting in stay of proceedings for the last 1½ years before the Trial Court.

3. The senior counsel for the petitioner and the counsel for the respondents have been heard.

4. The respondents / plaintiffs have sued for recovery of possession of immoveable property from the petitioner / defendant on the basis of landlord

– tenant relationship, after determination of tenancy of the petitioner / defendant.

5. The petitioner / defendant desires to file additional documents and desires the evidence of another suit to be read in support of his plea in the written statement of part of the land underneath the premises in his occupation having been acquired and the respondents / plaintiffs thus ceasing to be the landlord thereof and being not entitled to recover possession.

6. Though the counsel for the respondents / plaintiffs had contended that the documents now sought to be filed and the evidence in the other suit now sought to be read on the said aspect is not relevant owing to the nature of the suit i.e. on the basis of landlord – tenant relationship but a perusal of the issues framed in the suit on 22nd February, 2005 and additional issues framed in the suit on 1st August, 2011 shows the ambit of the suit to be wider. Additional issue no.5-C and 5-E are found to be as under:-

“5-C. Whether the plaintiff has no locus standi to file the present suit as the alleged in para No.4 of preliminary submissions of the amended WS? OPD”

“5-E. Whether the remaining portion of the shop under the tenancy of the defendant after demolition forms part of Khasra No.26 and not Khasra No.27 as alleged by the defendant? OPD”

7. The petitioner / defendant in para 4 of the preliminary submissions of his written statement has *inter alia* pleaded that the respondents / plaintiffs have no *locus standi* to file the suit as the property is situated in Khasra No.26 and not in Khasra no.27 as alleged by the respondents / plaintiffs and

hence the respondents / plaintiffs are neither the owners nor the landlords of the property.

8. Though it *prima facie* appears that in a landlord – tenant suit such issues ought not to have been framed but the issues having been framed, the Suit Court would be required to return findings thereon and the documents and the evidence now sought to be filed / read in the suit is found to be relevant for the said purpose.

9. The counsel for the respondents / plaintiffs has contended that the petitioner / defendant though in the written statement as originally filed had categorically admitted the landlord – tenant relationship but in the amended written statement has taken a contradictory stand and which cannot be permitted.

10. It was for the respondents / plaintiffs to oppose the application for amendment of the written statement on the said ground and the amendment having nevertheless been allowed and the issues having been framed thereon, at this stage the Court is to consider the relevancy of the documents on the basis of the issues as they stand. It is however made clear that nothing contained in this order shall come in the way of the respondents / plaintiffs if otherwise entitled in law to take advantage of the said contradictory stand, aver so.

11. Otherwise, I find the documents sought to be filed and the evidence in the other suit sought to be read in the subject suit to be relevant.

12. The only question is of delay.

13. The counsel for the respondents / plaintiffs has argued that the learned Civil Judge has given cogent reasons for disallowing the application.

14. Undoubtedly so. The impugned order of the learned Civil Judge is found to be lucid and well reasoned. However I am of the opinion that since the recording of evidence of the petitioner / defendant has not commenced as yet and since the documents have been found to be relevant for the issues framed, notwithstanding the delay on the part of the petitioner / defendant, the same should not be shut out.

15. I have however suggested to the senior counsel for the petitioner / defendant that instead of the file of another suit being attached to the subject suit, the petitioner / defendant files certified copies of the evidence therein and to prove the same in evidence in accordance with law.

16. The same is acceptable to the senior counsel for the petitioner / defendant under instructions.

17. However the respondents / plaintiffs have to be compensated for the delay. The suit indeed has been pending for a long time i.e since the year 2004. Accordingly, the documents which have been filed along with the application which was dismissed vide impugned order are permitted to be taken on record and the petitioner / defendant is permitted to file certified copies of evidence in the other suit within ten days of today subject to the petitioner / defendant within the said ten days paying costs of Rs.1,00,000/- to the counsel.

18. The senior counsel for the petitioner / defendant says that the petitioner / defendant is unable to pay the said costs.

19. If that is so, then this petition will have to stand dismissed. The petitioner cannot on the one hand attempt to set the clock back in a suit pending for the last thirteen years and on the other hand be not willing to

pay the costs for compensating the resultant delay in disposal of the suit for possession of the respondents/plaintiffs, if meritorious.

20. Since categorically payment of costs has been refused, the petition is dismissed.

RAJIV SAHAI ENDLAW, J.

JULY 06, 2017

21. The counsel for the petitioner / defendant, after obtaining instructions, has mentioned the matter and states that the petitioner / defendant is ready to pay the costs of Rs.1,00,000/-.

22. Costs be paid within ten days.

23. On enquiry, it is informed that the suit is listed next before the Trial Court on 31st July, 2017 for petitioner's / defendant's evidence.

24. I have enquired from the counsel for the respondents / plaintiffs, whether in the light of the documents permitted to be filed, the respondents / plaintiffs desires to lead any further evidence.

25. The counsel states that he will have to consider.

26. The counsel for the respondents / plaintiffs to at the time of receipt of costs inform the counsel for the petitioner / defendant whether he will be leading any further evidence. If he does not indicate so, the petitioner / defendant to on the date fixed proceed with their evidence.

27. The petition is disposed of.

Dasti.

RAJIV SAHAI ENDLAW, J.

JULY 06, 2017/‘pp/gsr’..

CM(M) No.738/2015

Page 5 of 5