

\$~11 & 12

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

+ CM(M) 821/2017 & CM No.27534/2017 (for stay)

S.B. GUPTA & ORS Petitioners
Through: Mr. Pawan K. Bahl, Adv.

Versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Ms. Suneha Jain, Adv. for Mr. Arjun
Mahajan, Adv.

AND

CM(M) 822/2017 & CM No.27541/2017 (for stay)

S.B GUPTA & ORS Petitioners
Through: Mr. Pawan K. Bahl, Adv.

Versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Ms. Suneha Jain, Adv. for Mr. Arjun
Mahajan, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

12.10.2017

1. This order is in continuation of the earlier order dated 2nd August, 2017.

2. Though the petitioners/plaintiffs have till date not filed the order sheet in the suits from which these petitions arose but have filed a gist of the

CM(M) 821/2017 & CM(M) 822/2017

Page 1 of 5

orders and states that he has himself inspected the suit files and the said gist of the order sheet represents the orders truly.

3. A perusal of the said gist of the order sheet filed in CM(M) No.821/2017 shows (i) that issues were framed on 15th May, 2013 and two issues were ordered to be treated as preliminary issues; (ii) that vide order dated 7th July, 2015, it was held that the issues which have been ordered to be treated as preliminary issues could not be decided without trial and the suit was set down for evidence of the petitioners/plaintiffs on 9th December, 2015 with direction to give advance copy of the affidavit by way of examination-in-chief one week before the next date of hearing; (iii) that on 9th December, 2015, the petitioners/plaintiffs sought adjournment on the ground that some documents required to be tendered in evidence were not available; the said request was opposed by the counsel for the respondent/defendant stating that the suit was very old; “in the interest of justice”, “one adjournment” was granted to the petitioners/plaintiffs subject to deposit of costs of Rs.1,500/- with DLSA funds and the suit posted for evidence of the petitioners/plaintiffs on 22nd March, 2016; (iv) that on 22nd March, 2016 and 11th May, 2016, the Presiding Judge of the Court was on leave; (v) that thereafter on 22nd August, 2016, the petitioners/plaintiffs again sought adjournment on the same ground that the documents had not been procured, though application under the Right to Information Act, 2005 had been filed; “last opportunity” was granted to the petitioners/plaintiffs to conclude their evidence on 28th November, 2016; (vi) that on 28th November, 2016, again no witness of the petitioners/plaintiffs was present

and in accordance with the earlier order, the petitioners/plaintiffs' evidence was closed and the suit posted for evidence of the respondent/defendant on 13th January, 2017; (vii) that the petitioners/plaintiffs instead of challenging the order dated 28th November, 2016 appear to have filed an application under Section 151 of the Code of Civil Procedure, 1908 (CPC) for re-opening of the petitioners/plaintiffs' evidence; neither is it apparent from the copy of the application filed as to when it was filed nor is the counsel for the petitioners/plaintiffs able to tell; from the gist of the order sheet also, the same cannot be known; (viii) that the said application was dismissed vide impugned order dated 1st June, 2017.

4. The counsel for the petitioners/plaintiffs states that the order sheet in the suit subject matter of CM(M) No.822/2017 is identical.

5. The application under Section 151 of CPC for re-opening of the petitioners/plaintiffs' evidence was in the nature of an application for review of the order dated 28th November, 2016 closing the evidence of the petitioners/plaintiffs.

6. Supreme Court in ***Land Acquisition Officer, Andhra Pradesh Vs. Ravi Santosh Reddy*** (2016) 14 SCC 238 has held that no revision petition lies against an order of dismissal of an application for review, without challenging the order of which review was sought.

7. The petitioners/plaintiffs in these petitions have not challenged the order dated 28th November, 2016 closing the evidence of the petitioners/plaintiffs. Merely by giving a nomenclature and title of Section 151 of CPC and of "re-opening of evidence", the ratio of the said judgment *CM(M) 821/2017 & CM(M) 822/2017*

cannot be avoided. I have in order dated 19th September, 2017 in CM(M) No.1028/2017 titled *Fashion to Fashion Experts Vs. MVM Enterprises* held that the said ratio applies equally to petitions under Article 227 of the Constitution of India.

8. Though for this reason alone these petitions are liable to be dismissed as not maintainable but even on merits, the only contention which the counsel for the petitioners/plaintiffs can make is that the petitioners/plaintiffs availed of “only three opportunities” for leading their evidence and should be given one more opportunity.

9. I have already, in order dated 2nd August, 2017, recorded that the suits are of 1993 and 1999 vintage. The National Court Management Systems Committee of the Supreme Court has desired all suits over ten years old to be disposed of before the end of this year. The State Court Management Systems Committee of this Court is monitoring the said process and has been requesting the Courts within the supervisory jurisdiction of this Court to not grant unnecessary adjournments and to ensure disposal of more than ten years old suits as desired.

10. Though sitting on the judicial side, if it were to be found that the evidence of the petitioners/plaintiffs has wrongly been closed, notwithstanding the aforesaid, the order would have been set aside but I do not find any such case.

11. I may also record that evidence is to be collected before filing the suit and not after the suit is listed for evidence.

12. I have for detailed reasons given in order dated 13th September, 2017 in CM(M) No.1004/2017 titled *Satya Bhushan Vs. Ramesh Chand* and in order dated 13th October, 2017 in CM(M) No.1135/2017 titled *Sunit Kathuria Vs. Arun Kathuria* held that unless the Courts themselves enforce discipline, discipline in administration of justice cannot be expected, inasmuch as it appears that not only the defendant but even the plaintiffs are not interested in early adjudication of their claim. However, the same is affecting the administration of justice and is leading to a breach of confidence in Courts in public opinion. It is thus for the Courts only to ensure that the date/s of hearing given is/are respected and the purpose for which the *lis* is listed for hearing is achieved on the said date. Otherwise also, grant of three adjournments, particularly when the petitioners/plaintiffs were sufficiently cautioned, are more than enough and the litigations cannot be kept pending endlessly.

13. There is no merit in these petitions.

14. Dismissed.

RAJIV SAHAI ENDLAW, J.

OCTOBER 12, 2017

Bs..