

\$~54

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 836/2017
BRIJ BHUSHAN SHARAN (SINCE DECEASED) THR LEGAL
REPRESENTATIVE Petitioner

Through: Ms. Poonam, Adv.

Versus

STATE OF RAJASTHAN Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **04.08.2017**

CM Nos.27799/2017, 27800/2017 & 27801/2017 (all for exemptions)

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

CM(M) 836/2017 & CM No.27798/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 29th May, 2017 in CS SCJ No.8186/2016 (Old No.587/1993) of the Court of Civil Judge-04 (West), Tis Hazari Courts, Delhi] of dismissal of the application under Order XIV Rule 5 of the CPC for framing of additional issues of the petitioner / defendant no.1 in suit instituted by the respondent State of Rajasthan as far back as in the year 1993 for recovery of possession of immovable property.

4. The petitioner / defendant no.1 sought framing of the following two additional issues:

- “1. Whether the suit has been duly signed, verified and filed by the authorised person?
2. Whether the court fee purchased by Bank of Rajasthan, Bikaner House, Delhi entitles plaintiff to file the present suit?”

5. The learned Civil Judge, in the impugned order, has reasoned i) that

the plaint clearly mentions that Sh. V.K. Saxena is Deputy Secretary in Government of Rajasthan and authorized to sign, verify and file the suit; ii) that subsequently on 24th March, 2017 State of Rajasthan appointed Sh. Vijayesh Kumar to pursue the suit and which was also accompanied by order of the State of Rajasthan; iii) that in view of these clear pleadings, there was no need to frame the proposed additional issue no.1; iv) that the issue whether court fee purchased by the Bank of Rajasthan entitled the State of Rajasthan to institute the suit was without any substance as the suit had been instituted by State of Rajasthan itself.

6. I have also drawn attention of the counsel for the petitioner /defendant no.1 to the dicta of the Supreme Court in ***United Bank of India Vs. Naresh Kumar*** (1996) 6 SCC 660 laying down that in suits instituted for recovery of public monies, the technical issues as of signing and verification of the plaint are not to defeat the recovery of public monies and the claim for public monies cannot be defended for such reasons.

7. The said view has thereafter been consistently followed in (i) ***Peerless General Finance and Investment Co. Ltd. Vs. Punjab & Sindh Bank*** ILR (2008) I Delhi 203; (ii) ***Mahanagar Telephone Nigam Ltd. Vs. Suman Sharma*** 2010 SCC OnLine Del 4290; and, (iii) ***Sheel Polypacks Vs. The Sangli Bank Limited*** MANU/DE/9500/2006 (DB).

8. What has been held with respect to public monies, applies equally to recovery of public property subject matter of the present suit.

9. It cannot be lost sight of that the decree for recovery of possession, if any passed in the suit will be for the benefit of State of Rajasthan and State of Rajasthan will be put back into possession of the property.

10. Similarly, it matters not as to from which account the court fees was purchased and / or if the Bank of Rajasthan on behalf of the State of Rajasthan has purchased the court fees. The application, it appears, was intended to delay the further proceedings in the suit and this petition has been got listed today, as the suit itself is listed today before the Trial Court for cross-examination by the petitioner / defendant no.1 of the witnesses of the respondent / plaintiff.

11. The proposed issues even otherwise are not found to be material for adjudication of the controversy between the parties and are dilatory in nature to keep the suit which is already pending for the last 24 years, for many more years.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 04, 2017

‘gsr’ ..