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

+ CM(M) 1304/2016 & CM No.46889/2016 (for stay)

POOJA SURI

..... Petitioner

Through: Mr. Thakur Sumit & Mr. Vipin
Kumar Anand, Advs.

Versus

VEENA SURI & ORS

..... Respondents

Through: Mr. Rahul Lather, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **12.10.2017**

1. This petition under Article 227 of the Constitution of India impugns the orders [dated 3rd October, 2016 and 3rd December, 2016 in S.No.61423/2016 of the Court of JSCC/ASCJ/GJ (North-West), Rohini Courts, Delhi] of closure of the evidence of the petitioner / defendant and of dismissal of the application filed by the petitioner for review of the earlier order.
2. The petition was entertained and by order dated 19th December, 2016, notice of the petition was ordered to be issued; since by then final arguments had already been heard in the suit, vide *ex parte* interim order dated 19th December, 2016, the Suit Court was restrained from passing final order in the suit.
3. Vide subsequent order dated 20th April, 2017, the Trial Court record was also requisitioned. The counsels have been heard.
4. The suit from which this petition arises was instituted by the respondent no.1/plaintiff against the petitioner and the respondents no.2 to 4

for recovery of possession of first and second floors of property No.37-B, Pocket-A, Phase-II, Ashok Vihar, Delhi. The petitioner is the daughter-in-law of the respondent no.1/plaintiff and the counsel for the petitioner states that there is matrimonial litigation between the petitioner and her husband.

5. I have enquired the defence of the petitioner to the suit.

6. The counsel for the petitioner states that the respondent no.1 / plaintiff is the owner of the first floor of the property and it is the case of the petitioner that she has constructed the second floor of the property of which alone the petitioner is in possession of from her own monies.

7. I have enquired from the counsel for the petitioner that even if it be so, how does it constitute a defence in law. Even if the petitioner has spent monies in construction of the second floor or even contributed to the purchase price of the first floor, the same would still not make the petitioner the owner or give any right to the petitioner to continue to occupy the said second floor.

8. Though the counsel for the petitioner has been informed that the suit can be disposed of by granting time to the petitioner to vacate and in the meanwhile the petitioner can take appropriate proceedings against her husband for residence but the counsel for the petitioner is not agreeable.

9. Else, on merits, the respondent no.1 / plaintiff closed her evidence in the suit on 7th September, 2016 and the suit was adjourned to 3rd October, 2016 for evidence of the petitioner / defendant when, reasoning that the petitioner had earlier taken as many as 11 adjournments in the suit and had not even filed any list of witnesses, the evidence was closed and vide subsequent impugned order dated 3rd December, 2016, the application for

review dismissed.

10. Though the learned Additional Senior Civil Judge (ASCJ) has given cogent reasons but finding that the evidence of the petitioner / defendant was closed on the very first date when the suit was listed for evidence of the petitioner / defendant and on being informed that the Presiding Judge of the Suit Court who had heard arguments has been transferred and now the Suit Court is presided by a new Judge and the suit is listed next for final arguments on 28th December, 2017, this petition is disposed of with the following directions:

- (i) The petitioner / defendant is permitted to examine herself and only one witness from the Delhi Development Authority (DDA) and no other witness;
- (ii) The learned JSCC/ASCJ/GJ, (North-West) District, Rohini Courts, Delhi before whom the suit is pending is requested to take up the suit on 23rd October, 2017 and if for any reason not on the said date, on a date soon thereafter;
- (iii) The petitioner, to on the said date, file her affidavit by way of examination-in-chief and furnish copy thereof to the counsel for the respondent no.1 / plaintiff;
- (iv) The Suit Court is requested to fix a date well before 20th December, 2017 for evidence of the petitioner / defendant;
- (v) The petitioner / defendant to summon the witness from the DDA for the said date and to ensure presence of the said witness before the Court on the said date or on any subsequent

date which may be fixed for the said purpose at her own costs and responsibility;

- (vi) If the petitioner / defendant or the witness commits default in appearance, no further opportunity shall be given and the evidence of the petitioner / defendant shall remain closed;
- (vii) The petitioner / defendant to also ensure that the witness from the DDA produces the documents which the petitioner seeks the said witness to produce and no adjournment shall be granted on the said ground;
- (viii) The Suit Court to take up the suit for final arguments on 20th December, 2017 as already scheduled.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 12, 2017

‘gsr’..