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

+ CM(M) No.902/2017 & CM No.30195/2017 (for stay).

GURKIRAT SINGH

..... Petitioner

Through: Mr. K. Sunil, Adv.

versus

J.N CHOUDHARY

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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23.08.2017

CM No.30196/2017 (for exemption).

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

CM(M) No.902/2017 & CM No.30195/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order (dated 8th May, 2017 in Suit No.9430/16 of the Court of Additional District Judge-03 (West), Tis Hazari Courts, Delhi) of dismissal of the application for review of the order dated 3rd March, 2016.
4. Vide order dated 3rd March, 2016, the application recorded in the order to be of the petitioner / defendant but argued by the counsel for the petitioner / defendant to be of the respondent / plaintiff, under Order VII Rule 14 of the Code of Civil Procedure, 1908 (CPC) was allowed as not opposed.
5. The counsel for the petitioner / defendant has been heard.
6. The position which emerges is that the respondent / plaintiff has instituted a suit against the petitioner / defendant for recovery of possession of immovable property. The petitioner / defendant, besides filing the written

statement to the suit, has filed a counterclaim for specific performance of the Agreement to sue by the son-in-law of the respondent / plaintiff to sell the property to the petitioner / defendant, averring the said son-in-law and not the respondent / plaintiff to be the owner of the property.

7. It has been enquired from the counsel for the petitioner / defendant that if according to the petitioner / defendant, it is the son-in-law of the respondent / plaintiff who is the owner of the property and had agreed to sell the property to the petitioner / defendant, on what basis is the petitioner / defendant seeking specific performance of the said Agreement to Sell by way of a counterclaim in the suit filed by the respondent / plaintiff.

8. The counsel for the petitioner / defendant states that he has also advised the petitioner / defendant to implead the son-in-law of the respondent / plaintiff as a party to the counterclaim.

9. As per the dicta of this Court in *Nandan Prasad Gupta Vs. Sunil Gupta* (2003) 68 DRJ 315 and *Gastech Process Engineering (India) Pvt. Ltd. Vs. Saipem* (2009) 159 DLT 756 a third party cannot be impleaded in a counterclaim. Thus, the advice given of impleadment of the son-in-law of the respondent / plaintiff in the counterclaim, does not appear to be correct. In fact, from what is argued today the counterclaim is misconceived and liable to be rejected outrightly.

10. It is also argued, that the respondent / plaintiff at the stage of final opportunity to the respondent / plaintiff to lead his evidence, filed the application aforesaid under Order VII Rule 14 of the CPC, to place on record documents showing his ownership of the property. It is argued that the said documents are forged and fabricated.

11. The order dated 3rd March, 2016 records that the counsel for the petitioner / defendant did not oppose the application.

12. The counsel for the petitioner / defendant has however argued that the petitioner / defendant had filed a reply to the application under Order VII Rule 14 of the CPC and in which reply, had opposed the application; thus the consent given by the then counsel for the petitioner / defendant to the application under Order VII Rule 14 of the CPC was contrary to the record and contrary to the instructions of the petitioner / defendant and for that reason only, review was sought and which application for review has been dismissed.

13. On enquiry, whether any action has been taken against the earlier Advocate or even a Notice was issued to him to give him an opportunity to reply to the averment, the answer is in the negative.

14. The impugned order records and as also borne out from the order sheet of 3rd March, 2016, the petitioner / defendant was also present in person before the Court on 3rd March, 2016. It is this reason which has prevailed with the learned Additional District Judge to, vide the impugned order, dismiss the application for review.

15. If the actions of the counsels are permitted to be so challenged, merely by engaging a new counsel, the entire working of the Court will come to a standstill and the legal profession will be rendered *otiose* and the Courts will have to, at each and every date call the parties and hear the parties only. An Advocate is an 'agent' of a party to a *lis* and the party to the *lis* is bound by the actions of his / her 'agent'.

16. Moreover it appears from the aforesaid that the entire *lis* is still at

large since the relevant party is not even before the Court and the proceedings as have been going on till now are meaningless. Even if it were to be held that the petitioner / defendant is entitled to institute a separate suit against the son-in-law of the respondent / plaintiff for specific performance, the questions would still be at large. For this reason also it is not deemed necessary to interfere with the order dismissing the application of the petitioner / defendant for review of the order dated 3rd March, 2016. The learned Additional District Judge in the impugned order has also observed that all pleas about the genuineness of the documents and admissibility thereof would remain open to the petitioner / defendant.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 23, 2017

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