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

+ CM(M) 912/2017

PARMILA SINGH & ANR Petitioners

Through: Mr. K. Sunil, Adv.

Versus

ASHOK SALUJA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **25.08.2017**

CM No.30522/2017 (for exemption)

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

CM(M) 912/2017 & CM No.30521/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order dated 4th July, 2017 in M.No.67/2016 of the Court of JSCC-ASCJ-Cum-Guardian Judge, Dwarka Courts, Delhi.
4. The counsel for the petitioners / defendants has been heard.
5. The respondent, in the year 2012, instituted the suit (from which this petition arises) against the petitioners / defendants for recovery of possession of immovable property. The said suit was accompanied with an application for interim relief.
6. The suit was posted on 27th May, 2016 for arguments on the application of the respondent / plaintiff under Order XXXIX Rules 1&2 of the Code of Civil Procedure, 1908 (CPC). On none appearing for the petitioners / defendants on the said date and it being found that the respondent / plaintiff on an earlier date had been imposed costs of

Rs.10,000/- and which had been paid to the counsel for the petitioners / defendants, an opportunity was given to the counsel for the petitioners / defendants to address argument on the application on 29th July, 2016 subject to payment of costs of Rs.5,000/-.

7. On 29th July, 2016, the counsel for the petitioners / defendants again did not appear and adjournment was sought. In this circumstance, the application under Order XXXIX Rules 1&2 of the CPC of the respondent / plaintiff was allowed but since the cost was not paid, it was ordered to be paid on the next date.

8. The petitioner / defendant still did not pay the costs.

9. The suit was listed on 30th November, 2016 for framing of issues when after framing the issues and posting the suit for evidence, it was clarified that any opportunity to cross-examine the respondent's / plaintiff's witnesses shall be subject to payment of previous costs by the petitioners / defendants.

10. The petitioners / defendants still did not pay the costs.

11. On 25th May, 2017, one of the witnesses of the respondent / plaintiff was examined; the counsel for the petitioners / defendants did not appear on the said date also and sent a proxy counsel; the costs were also not paid; the opportunity to cross-examine the witness of the respondent / plaintiff examined on that date was closed and the suit posted for remaining evidence of the respondent / plaintiff.

12. On 4th July, 2017, the respondent / plaintiff examined another witness. Since the cost was still not paid, the petitioners / defendants were not permitted to cross-examine the said witnesses also. Faced therewith an

application was moved for recalling of the order dated 25th May, 2017 denying the opportunity to cross-examine PW1. I may mention that even on 4th July, 2017, the counsel for the petitioners / defendants did not appear and had again sent a proxy counsel.

13. The learned Civil Judge in the aforesaid circumstances, not only dismissed the application for recall of the order dated 25th May, 2017 but also closed the right of the petitioners / defendants to lead evidence and posted the suit to 26th August, 2017 for hearing final arguments.

14. I may highlight that the orders with effect from 27th May, 2016 enumerated above are not under challenge and have attained finality. Thus neither the imposition of costs nor the direction that the petitioners / defendants will have no right to cross-examine the witnesses of the respondent / plaintiff are under challenge.

15. The counsel for the petitioners / defendants states that the costs were tendered on 4th July, 2017 but not accepted. It is however not so recorded in the order dated 4th July, 2017 and even in the application under Section 151 CPC filed on that date there was no mention of the costs being tendered.

16. I have in any case enquired from the counsel for the petitioners / defendants that even if the costs were not being accepted, what is the remedy therefor.

17. The counsel agrees that the costs could have been deposited in the Court. The same also has not been done.

18. The conduct of the petitioners / defendants shows that while the petitioners / defendants are willing to accept costs imposed on the other

party but are not willing to pay the costs themselves. Such conduct of a litigant cannot be tolerated and considering the costs of legal proceedings, recovery of costs cannot be left to execution of the order of imposition of costs. Moreover, in the present case, the Court had vide order dated 30th November, 2016 made it abundantly clear that the participation by the petitioners / defendants thereafter in the suit would be subject to payment of costs. The petitioners / defendants did not still pay the costs and wanted to avoid the same 'at any cost' and now have to face the consequences therefor.

19. Though the order dated 30th November, 2016 only provided that right of cross-examination would be subject to payment of costs but in view of the consistent act of defiance of the petitioners / defendants no error is found in the order closing the right of the petitioners / defendants to lead their evidence also.

20. Such litigants are not entitled to any indulgence of the Courts.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 25, 2017

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