

\$~20

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

+ CM(M) 979/2017

MADAN GOPAL SINGH

..... Petitioner

Through: Mr. M.S. Vinaik & Ms. Anjali
Sharma, Advs.

Versus

MAHINDER KAUR & ORS

..... Respondents

Through: Mr. R.K. Sachdeva & Mr. Anshul
Mittal, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

08.09.2017

Caveat No.802/2017

1. The counsel for the respondents / caveators has appeared.
2. The caveat stands discharged.

CM No.32627/2017 (for exemption)

3. Allowed, subject to just exceptions.
4. The application is disposed of.

CM(M) 979/2017 & CM No.32626/2017 (for stay)

5. This petition under Article 227 of the Constitution of India impugns the order [dated 10th August, 2017 in Civil Suit No.10322/2016 of the Court of Additional District Judge-01 (ADJ), South-East District, Saket Courts, New Delhi] of dismissal of the application of the petitioner / plaintiff under Order XVIII Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (CPC), filed at the stage when the suit was ripe for final arguments, to lead additional evidence and to recall the petitioner / plaintiff as a witness.
6. The learned ADJ, in the impugned order, has reasoned i) that the suit was instituted as far back as in the year 2005 for the relief of specific performance of an agreement of sale of immovable property; ii) that the

issues were framed in the suit on 21st August, 2007; iii) that the petitioner / plaintiff availed several opportunities for leading his evidence; iv) that the only ground for seeking to lead additional evidence and to examine the petitioner / plaintiff again, was by laying the blame on the earlier counsel not knowing the law and having not placed the material before the Court inspite of the same being handed over to him; v) that the earlier counsel did not conduct the case properly; vi) that the cross-examination of the petitioner / plaintiff was completed on 3rd August, 2010; vii) that it is not as if the petitioner / plaintiff is an illiterate person or otherwise not able to understand the nature of the case or what all he was required to produce; he is a businessman, residing in a posh residential colony of South Delhi; viii) that the petitioner / plaintiff was not handicapped by his age also, inasmuch as at the time of deposition he gave his age of 53 years; ix) that though the earlier counsel was sought to be blamed but merely by making an averment and no action even has been taken against the counsel who was sought to be blamed; x) that an advocate is the agent of the party; xi) that the petitioner / plaintiff by placing the documents and leading additional evidence was wanting to commence the trial de-novo after the suit had remained pending for over 12 years. Resultantly, relying upon ***K.K. Velusamy Vs. N. Palanisamy*** (2011) 11 SCC 275 and ***Raunaq Automotive Components Ltd. Vs. J.P.S. Kanwar*** MANU/DE/3193/2015, the application was dismissed.

7. I have enquired from the counsel for the petitioner / plaintiff whether he, before blaming his colleague, rang up the advocate to whom it has been pleaded that the petitioner / plaintiff had handed over the documents relevant

to prove the case of the petitioner / plaintiff and which were not placed by the said advocate on record.

8. The counsel for the petitioner / plaintiff states that he would not like to get personally involved in the issue.

9. It has next been enquired, whether the petitioner / plaintiff sent any communication to that advocate asking why, inspite of documents having been handed over to him, the same were not filed.

10. The answer is in the negative but qualified with, that the petitioner / plaintiff discovered it now only.

11. It is not understandable that when the petitioner / plaintiff deposed in examination-in-chief or filed his affidavit by way of examination-in-chief, why did he not at that time discover as to why the documents had not been placed on record or were not being referred to in the examination-in-chief.

12. Unfortunately, engagement of a new counsel has come to be understood as accrual of a fresh cause of action in a pending lis and it is increasingly found that whenever a new counsel is engaged in a pending lis, applications to commence the suit / defence de novo are filed, blaming the earlier counsel. Interestingly it is found that the counsel, who in one case is blaming another counsel, is being himself blamed in some other case. Thus, a bald plea in this regard cannot be accepted.

13. If the Courts keep on granting such indulgence, the suits before the Courts will never come to an end and the task undertaken by the National Court Management Systems Committee of the Supreme Court, to have at least 10 years old cases decided preferably by 31st December, 2017 and

which task is being monitored by all the High Courts, will not be accomplished.

14. Only when it is found that the trial court, in refusing the additional evidence to be taken on record, has committed any perversity, is a case for interference in jurisdiction under Article 227 of the Constitution of India is made out. Else, the Courts on the Administrative Side and on the Judicial Side would be sending inconsistent signal, resulting in the task aforesaid being defeated.

15. Option has been given to the counsel for the petitioner / plaintiff to withdraw this petition if desires to challenge the order impugned in this petition against the final adjudication of the suit but which has been declined.

16. There is no merit in the petition.

Dismissed.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 08, 2017

‘gsr’..