

\$~34.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) No.984/2017 & CM No.32746/2017 (for stay).
PRAKSH CHANDER MEHANI Petitioner
Through: Mr. Jasmeet Singh and Mr. Saurabh
Tiwary, Advs.
versus
PREM MEHANI & ORS Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **08.09.2017**

CM No.32747/2017 (for exemption) and CM No.32748/2017 (exemption from filing Trial Court Record).

1. Allowed, subject to just exceptions.
2. The applications stand disposed of.

CM(M) No.984/2017 & CM No.32746/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order (dated 28th July, 2017 in CS DJ No.11835/16 of the Court of Additional District Judge-1 (South-East), Saket Courts Complex, New Delhi).
4. Vide the said order, the suit has been put up on 4th September, 2017 for admission / denial of the documents and for framing of issues. It is not understandable as to what can be the grievance of the petitioner.
5. On going through the paper book it is found that the petitioner is the defendant no.4 in the suit. The counsel for the petitioner confirms.
6. What transpires is, that vide order dated 28th November, 2014 in the

Suit, on failure of the petitioner / defendant no.4 to appear it was observed that the petitioner / defendant no.4 is liable to be proceeded against *ex parte*. Thereafter vide order dated 28th August, 2015 the right of the petitioner / defendant no.4 to file written statement was closed. However the petitioner / defendant no.4, vide subsequent order dated 8th January, 2016 was permitted to file written statement.

7. The counsel for the petitioner / defendant no.4 states that the costs subject to which the written statement was permitted to be filed was paid and the written statement filed.

8. As per the impugned order dated 28th July, 2017, none appeared for the petitioner / defendant no.4 before the Court and the Court has in the appearance column of the Advocates noted that the petitioner / defendant no.4 had earlier been proceeded against *ex parte*.

9. Though the counsel for the petitioner / defendant no.4 states that his colleague was present but it is inconceivable why the appearance of the Advocate for the defendant no.4 would not be noted when the learned Additional District Judge noted the appearance by name, of not only the counsel but even the parties present and has gone to the extent of stating that which of the counsels were proxy.

10. The counsel for the petitioner / defendant no.4 states that Mr. Sunil Chaudhary, Advocate had appeared before the Additional District Judge but the Additional District Judge refused to record his presence and on the basis of the order dated 28th November, 2014 recorded that the defendant no.4 was *ex parte*.

11. I have further enquired from the counsel for the petitioner / defendant

no.4 as to why did Mr. Sunil Chaudhary, Advocate not show the subsequent orders to the learned Additional District Judge.

12. The counsel for the petitioner / defendant no.4 states that the orders were shown but the learned Additional District Judge notwithstanding the same, behaved as aforesaid.

13. No affidavit of Mr. Sunil Choudhary, Advocate has been filed along with this paper book nor is Mr. Sunil Chaudhary, Advocate present.

14. Mr. Sunil Chaudhary, Advocate to appear at 1415 hours today i.e. 8th September, 2017.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 08, 2017

15. Mr. Sunil Kumar Chaudhary, Advocate has appeared and has been heard.

16. The counsel for the petitioner / defendant no.4 states that he will take appropriate steps before the Suit Court and withdraws the petition.

17. Dismissed as withdrawn with liberty aforesaid.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 08, 2017

‘pp/gsr’..

Statement of Sh. Sunil Kumar Chaudhary, S/o Sh. Karan Singh, R/o A-44, Bapu Park, Kotla Mubarakpur, New Delhi.

OnSA

Q. What time was this suit called out on 20th July, 2017?

A. Between 1030 and 1100 hours.

Q. Who all were present in the Court at that time?

A. Myself, my client Mr. Prakash Chander Mehani, plaintiff Prem Mehani and the counsels for the other defendants were present but I do not remember the name of the other defendants present.

Q. Can you name the other counsels who were present?

A. Since I was the proxy counsel and since the file had been currently transferred to the District Court, I do not know the names of the other counsels.

Q. What transpired during the hearing?

A. I requested for marking my presence but the learned Additional District Judge stated “see the order dated 28th November, 2014 by which you were proceeded *ex parte*”. He further asked me “what do you have to say about the same”. I said, I will take instructions since I do not have the order with me.

Q. Did you have the case file with you?

A. I had the case file but not the order sheet but because it was bulky and I had not gone through the orders and therefore I could not point out the same.

**RO&AC
SEPTEMBER 08, 2017
‘gsr’**

RAJIV SAHAI ENDLAW, J