

\$~36

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

+ **CM(M) 972/2017**

SATISH KUMAR & ORS Petitioners

Through: Mr. Deepak Bashta, Adv.

Versus

RAJ KUMARI & ANR Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **06.09.2017**

CM No.32440/2017 (for exemption)

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

CM(M) 972/2017 & CM No.32439/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 17th February, 2017 in Civil Suit No.8573/2016 of the Court of ACJ-CCJ-ARC (East), Karkardooma Courts, Delhi] of dismissal of the application filed by the petitioner / defendant no.2 under Section 151 of the Code of Civil Procedure, 1908 (CPC) for “granting permission to tender the certified copies of the documents by way of additional evidence and to lead evidence”.
4. The impugned order records that the application had been filed at the stage of final arguments.
5. The counsel for the petitioner / defendant no.2 has contended that the application was not filed at the stage of final arguments but at the stage of defendants’ evidence and has in this regard drawn attention to the order

dated 27th April, 2017 in the suit, allowing the application (it is not very clear of which defendant) for summoning of witnesses and summoning the witnesses for 4th August, 2017.

6. On enquiry as to what is the next date in the suit, it is informed that deposition of the witnesses aforesaid was recorded on 4th August, 2017 and the suit is listed next before the Suit Court on 7th September, 2017 i.e. tomorrow for final arguments.

7. This petition impugning the order dated 17th February, 2017 which has come up today for the first time is dated 4th September, 2017 and was filed on 5th September, 2017 i.e. after nearly seven months from the date of impugned order.

8. It is quite obvious that the intention of the petitioner / defendant no.2 in filing this petition is only to derail the hearing of the final arguments scheduled for tomorrow. Else, there is no reason for the long delay after which the petition has been filed.

9. Though the Schedule to the Limitation Act, 1963 does not prescribe any period for filing a petition under Article 227 of the Constitution of India but it cannot be lost sight of that the exercise of jurisdiction thereunder is discretionary and once the Court finds the invocation of the power to be *mala fide* and with the intent to cause delay in the suit, the Court can certainly refuse to exercise jurisdiction and / or dismiss the petition only on the ground of laches, acquiescence and waiver.

10. The petitioner / defendant no.2, if was serious in proving the additional documents which were sought to be filed vide the application aforesaid, would have immediately after 17th February, 2017 approached this Court so that the opportunity if required to be given for proving the same could have been given when other witnesses of the defendants were being examined. On the contrary, the petitioner / defendant no.2 participated in the proceedings in the suit thereafter and has thereby acquiesced in the order and cannot be permitted to challenge the same now.

11. I may even otherwise record that the Suit Court has reasoned that the documents sought to be proved were not relevant for adjudication of the issues in the suit.

12. At this stage, the counsel for the petitioner / defendant no.2 states that the witnesses who were summoned vide order dated 27th April, 2017 supra were summoned to prove the documents which were sought to be filed under cover of application under Section 151 CPC aforesaid.

13. The said argument makes the position worse and aggravates the *mala fides* of the petitioner / defendant no.2. Once the documents had been refused to be taken on record on 17th February, 2017, it is not understood why the application for summoning the witnesses to prove the said documents was filed and orders thereon obtained on 27th April, 2017.

14. The petition is dismissed with costs of Rs.5,000/- payable to the Delhi High Court Bar Association Lawyers' Social Security and Welfare Fund, New Delhi and proof of which payment be shown to the Suit Court at the time of hearing tomorrow as a pre-condition for the petitioner / defendant

no.2 participating in the suit. The counsel for the petitioner / defendant no.2 is made responsible for informing this order to the Suit Court tomorrow and for complying therewith.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 06, 2017
'gsr'..