

\$~39/55/56

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

+ CM(M) 1003/2017 & CM No.33390/2017 (for stay)

SHREE SHREE MAA ANANADMAYEE

KUCHAMAN TRUST

..... Petitioner

Through: Mr. S.S. Rathore & Mr. Kapil Kher,
Advs.

Versus

PRITI PRATAP SINGH & ORS

..... Respondents

Through: None.

AND

CM(M) 600/2017 & CM No.20376/2017 (for stay)

SHREE SHREE MAA ANANADMAYEE

KUCHAMAN TRUST

..... Petitioner

Through: Mr. S.S. Rathore & Mr. Kapil Kher,
Advs.

Versus

PRITI PRATAP SINGH & ORS

..... Respondents

Through: None.

AND

CM(M) 601/2017 & CM No.20378/2017 (for stay)

SHREE SHREE MAA ANANADMAYEE

KUCHAMAN TRUST

..... Petitioner

Through: Mr. S.S. Rathore & Mr. Kapil Kher,
Advs.

Versus

PRITI PRATAP SINGH & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

15.09.2017

1. CM(M) No.600/2017 and CM(M) No.601/2017 are listed today in terms of order dated 13th September, 2017 in CM(M) No.1003/2017.

2. Though CM (M) No.1003/2017 was dismissed vide order dated 13th September, 2017 but was nevertheless posted for today on it being disclosed that CM(M) Nos.600/2017 and 601/2017 arising from the same suit were also pending.
3. This order in CM(M) Nos.600/2017 and 601/2017 be thus read in continuation of the order dated 13th September, 2017 in CM(M) No.1003/2017.
4. CM(M) No.600/2017 has been preferred against the order dated 25th March, 2017 of dismissal of an application of the petitioner / defendant no.5 under Order VIII Rule 9 CPC for filing additional written statement.
5. The counsel for the petitioner/defendant No.3 argues that the plaintiff in the suit had in the year 2004 amended the plaint by introducing para no.10(A) thereto; that though the amended plaint was filed on 5th November, 2004 but “the aforesaid para no.10(A) of the amended plaint is related with the humble defendant no.5 which is specifically became unanswered till yet so far. No written statement to the amended plaint was filed on behalf of humble defendant Trust”. Thus, the application dated 24th October, 2016, after 12 years of the filing of the amended plaint, was filed to file the written statement thereto.
6. The petitioner/defendant no.5 woke from its kumbhakarna sleep after exactly 12 years. Merely because the petitioner / defendant no.5 in 2016 chose to have a look at the suit file and realised that no written statement had been filed to the plaint amended in the year 2004, does not entitle the petitioner / defendant no.5 to set the clock back in the suit which is of the

year 1994. No error is thus found in the impugned order dated 25th March, 2017 to the said extent.

7. The next argument of the counsel for the petitioner with respect to CM(M) No.600/2017 is, that besides wanting to file the written statement to the amended plaint, the petitioner/defendant no.5 also wanted to amend the written statement to take the plea of subsequent events. It is contended that an application was filed before the Assistant Commissioner, Devasthan Department, Ajmer by the plaintiff in the suit, for deleting the entries in the Register under the Rajasthan Public Trust Act, 1959 and which application was opposed by the petitioner/defendant No.5 and was dismissed by the Assistant Commissioner, Devasthan Department, Ajmer. The counsel for the petitioner / defendant no.5 states that the petitioner / defendant no.5 wanted to plead the said subsequent event and to place on record of the suit the record of the said proceedings before the Assistant Commissioner, Devasthan Department, Ajmer.

8. The order of the Assistant Commissioner, Devasthan Department, Ajmer would be a public document within the meaning of Section 74 of the Indian Evidence Act, 1872 and if relevant to adjudication of the suit, the petitioner / defendant no.5 would be entitled to refer to the certified copy of the said order under Section 76 of the Evidence Act.

9. Thus the need to allow amendment of the written statement at this stage, when the suit from which these petitions arise is listed for final arguments on 26th September, 2017, thereby derailing the adjudication of the suit, does not arise.

10. With the observations aforesaid, CM(M) No.600/2017 is dismissed.
11. CM(M) No.601/2017 impugns the order dated 25th March, 2017 of dismissal of an application filed by the petitioner / defendant no.5 to place the aforesaid documents on record.
12. The counsel for the petitioner / defendant no.5 argues that the petitioner / defendant no.5 does not want to lead any evidence or to examine any witness or lead any other evidence.
13. Unless any of the other documents besides the certified copy of the order of the Assistant Commissioner, Devasthan Department, Ajmer are also public documents, the same cannot be read by the Suit Court in evidence without proof
14. There is thus no merit in CM(M) No.601/2017 also.
15. Resultantly, all the three petitions viz. CM(M) Nos.1003/2017, 600/2017 & 601/2017 are dismissed.
16. No costs.
17. The dates already given of 10th November, 2017 in CM(M) Nos.600/2017 & 601/2017 are cancelled.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 15, 2017

‘gsr’..