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

+ CM(M) 1115/2017

M/S V2 RETAIL LTD

..... Petitioner

Through: Mr. Vishnendra Verma, Adv.

Versus

DEEPAK AGGARWAL & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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10.10.2017

CM No.36347/2017 (for exemption)

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

CM(M) 1115/2017 & CM No.36346/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 1st July, 2017 in CS No.16796/2016 of the Court of Additional District Judge (ADJ)-02, Dwarka Courts, New Delhi] declining the request of the petitioner / defendant to substitute DW Rajveer Singh earlier examined and partly cross-examined, with another witness, on the ground that DW Rajveer Singh had left the services of the petitioner / defendant.
4. The impugned order dated 1st July, 2017 records that “on the last date of hearing”, the request of the defendant to file fresh affidavit of evidence of a new authorized representative of the petitioner / defendant had been declined and the petitioner / defendant had been asked to seek assistance of the Court for ensuring appearance of DW Rajveer Singh; however inspite thereof, no steps had been taken.

5. The petitioner / defendant has not filed the copy of the order of the date of hearing before 1st July, 2017.
6. The counsel for the petitioner / defendant also does not have a copy of the same.
7. The same has not even been challenged.
8. It thus transpires that the order dated 1st July, 2017 rejecting the request aforesaid made by the petitioner / defendant is only a consequential order to the earlier order. The petitioner / defendant having not challenged the earlier order, is not entitled to challenge the order dated 1st July, 2017 and this petition does not lie on that ground alone.
9. I may state that the counsel for the petitioner / defendant at this stage states that he will examine the earlier order and if need be challenge the same. In this view of the matter, I am at this stage refraining from making any further observations with respect to the challenge.
10. The petition is dismissed. The petitioner / defendant, however, if has any ground to challenge any earlier order, would be entitled to do so.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 10, 2017

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **TR.P.(C.) 75/2016**
Y.K. BHARDWAJ (DECEASED) THROUGH LRS Petitioner
Through: **Mr. Lalit Kumar and Mr. D.C.**
Sharma, Advs.

Versus

DELHI DEVELOPMENT AUTHORITY & ORS Respondents
Through: **Mr. Kunal Sharma, Adv. for R-**
1/DDA.
Mr. Ravinder Kumar Yadav, Mr. O.P.
Sharma, Ms. Charu Sharma and Ms.
Arti Anupriya, Advs. for R-2&3.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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10.10.2017

1. This order is in continuation of the yesterday's order dated 9th October, 2017.
2. Mr. Kunal Sharma, Advocate for Delhi Development Authority (DDA) appears and states that his colleague misinformed this Court yesterday that he has gone to Patiala House Courts; in fact he had gone to Nainital Courts for a litigation.
3. That makes the position worse. After knowing the date in the present case, there was no occasion for Mr. Kunal Sharma, Advocate to accept engagement for Nainital Courts. It shows that his absence yesterday was intentional and well thought of.
4. Even if it were to be believed that owing to some urgency the panel lawyer is unable to appear, arrangement should be made for effective representation. Merely sending an advocate who does not know anything

about the case does not suffice.

5. Mr. Kunal Sharma, Advocate assures that he will do justice with DDA in future and ensures that such default does not occur in future. Accepting the said assurance, no further orders are made at this stage.

6. Mr. Kunal Sharma, Advocate for DDA otherwise states that he has objection to this transfer petition.

7. He now states that he has no objection if the Tis Hazari Court's matter is transferred to Dwarka Courts and the disposal is made time bound.

8. The counsel for the petitioner states that the order dated 15th November, 2014 directed the Senior Civil Judge to return the findings within two months but more than three years have passed. He states that he has no objection if the order dated 15th November, 2014 is set aside in exercise of powers under Article 227 of the Constitution of India and the Additional District Judge (ADJ)-T (South-West), Dwarka Courts, Delhi is directed to hear RCA No.113/2014 with either of the two sets of persons claiming to be legal heirs of Y.K. Bhardwaj having their *inter se* disputes settled in the proceedings already pending between them, as contained in paras 3 to 6 of yesterday's order.

9. I have put it to the counsel for the respondents No.2&3 that the counsel for the petitioner as well as the counsel for the respondents No.2&3 can be permitted to oppose the appeal preferred by DDA against the decree in favour of Y.K. Bhardwaj with the benefit if any of the decree flowing to whosoever is in the other proceedings determined to be the legal representative of Y.K. Bhardwaj.

10. The counsel for the respondents No.2&3 states that the respondents No.2&3 have already led their evidence pursuant to the order dated 15th November, 2014 of remand and it is the petitioners who are dragging their feet in leading evidence. It is contended that since the proceedings have already remained pending for nearly three years, they be allowed to be now determined.

11. I have enquired from the counsel for the respondents No.2&3, whether not there would be any challenge to the finding returned by the Senior Civil Judge pursuant to the order of remand and whether not the same will further delay the matter.

12. The counsel for the respondents No.2&3 still does not agree to the proposal.

13. It is quite evident that neither the respondents No.2&3 nor DDA is interested in early disposal of the appeal preferred by DDA.

14. The counsel for DDA at this stage states that he has no objection to the aforesaid course of action.

15. Next is the question of transfer. The transfer would serve any purpose only if the question in the remanded proceedings and in the suit were to be decided together. However, if the question were to be decided in the suit, the entire procedure of the suit will have to be undergone. The suit is informed to be pending at the pre-issue stage.

16. Thus, on the one hand it appears that clubbing the two proceedings would result in the delay of the remanded proceedings and on the other hand allowing the two proceedings to continue separately may result in inconsistent findings.

17. The counsel for the respondents No.2&3 though has contended that the application under Section 10 of CPC filed by the respondents No.2&3 is pending in the suit but it appears that waiting the outcome thereof also may lead to further complexity.

18. I therefore, notwithstanding the protest of the respondents No.2&3 and in exercise of powers under Article 227 of the Constitution of India, set aside the order dated 15th November, 2014 in RCA No.113/2014 of the Court of ADJ-T (South-West), Dwarka Courts, Delhi. Resultantly, RCA No.113/2014 will have to be considered on its own merits. It is further directed that the counsel for Prem Lata Bhardwaj, Mansi and Gaurav Bhardwaj as well as the counsel for Ratna Manjari and Swati Ratna Manjari shall be entitled to oppose RCA No.113/2014, without however duplicating their arguments. If RCA No.113/2014 is decided in favour of DDA, both set of said persons shall be entitled to take their remedies thereagainst. However, if RCA No.113/2014 is decided against DDA and the decree in favour of the deceased Y.K. Bhardwaj is sustained, the benefit of that decree shall flow to whosoever in the suit pending in Tis Hazari Courts is held to be entitled to benefit thereof and the two sets of persons claiming to be the legal representative of Y.K. Bhardwaj shall be entitled to claim appropriate interim orders in the said suit in this regard.

19. It is further directed that till the decision of RCA No.113/2014, all the parties to maintain *status quo* title and possession of the property subject matter thereof.

20. With the aforesaid, the petition is disposed of.

21. The parties to appear before the ADJ-T (South-West), Dwarka Courts, in RCA No.113/2014 and before the District Judge (South-West) if the Court of said ADJ is not available, on 20th November, 2017

RAJIV SAHAI ENDLAW, J.

OCTOBER 10, 2017

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