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

+ **CM(M) 1056/2017**

SUSHILA GOPALAN & ANR

..... Petitioners

Through: Mr. Manu Nayar, Ms. Meenakshi
Bhatia and Ms. Radhika Pahadia,
Advs.

Versus

R.K. CHAWLA & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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20.09.2017

CMs No.34629/2017 & 34630/2017 (both for exemption)

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

CM(M) 1056/2017 & CM No.34628/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 13th September, 2017 in CS No.16226/2016 of the Court of Additional District Judge (ADJ)-13 (Central), Tis Hazari Courts, Delhi] closing the right of the petitioners/plaintiffs to lead evidence.

4. It is not as if the petitioner No.1 was not present before the Court on 13th September, 2017 for deposing as witness for herself or that her affidavit by way of examination-in-chief was not before the Court. The petitioner No.1/plaintiff along with her affidavit by way of examination-in-chief was present before the Court on 13th September, 2017 and the evidence of the petitioners/plaintiffs has been closed only for the reason of the advance copy

of the affidavit by way of examination-in-chief having not been furnished and for which reason the counsel for the respondents/defendants sought time for cross-examination.

5. The reason which appears to have prevailed with the learned ADJ in so closing the evidence of the petitioners/plaintiffs is of the suit being more than ten years old and there being directions from the National Court Management Systems Committee and the State Court Management Systems Committee of this Court to dispose of such suits expeditiously.

6. Else, the learned ADJ in the impugned order also has noted that mediation proceedings between the parties are still pending and the counsels made statements before the Court of settlement being imminent. The counsel for the petitioners/plaintiffs today also, on enquiry, states that mediation proceedings are listed next on 6th October, 2017.

7. In the aforesaid circumstances, the order closing the evidence of the petitioners/plaintiffs does indeed appear to be harsh and uncalled for.

8. Need to issue notice to the respondents/defendants before setting aside the impugned order is not felt since a reading of the order does not show that it was the counsel for the respondents/defendants who insisted on closure of evidence of the petitioners/plaintiffs and it was the Court's own order in the facts aforesaid. It is not deemed appropriate to issue notice also for the reason that the counsel for the petitioners/plaintiffs, on enquiry, states that the suit is listed for final arguments on 25th September, 2017 and it is felt that issuing notice to the respondent/defendant would delay further proceedings which are to take place in the suit which is already more than ten years old.

9. The counsel for the petitioners/plaintiffs, on enquiry, whether the petitioners/plaintiffs are to lead any further evidence, states that the petitioners/plaintiffs have to examine the attesting witnesses to the documents and the other official witnesses but also states that all the said witnesses have been examined in other proceedings *inter se* the parties and he will consider placing the evidence in those proceedings to be read in the suit from which this petition also arises. On enquiry, it is also informed that list of witnesses has been filed.

10. On the conditions (I) that the petitioner No.1/plaintiff appears before the ADJ on 25th September, 2017 for her deposition and has her deposition recorded and if for any reasons not attributable to the petitioners/plaintiffs, the recording of the said deposition is deferred to some other day, also appears on the said date/s without default; (II) that the petitioners/plaintiffs, if are required to move any application in the suit for having the evidence recorded in the other proceedings read in subject suit, file the said application before the Suit Court on 25th September, 2017; (III) that the petitioners/plaintiffs on the date/s if any to be given for the said purpose, produce their other witnesses without any default; the impugned order insofar as closing the right of the petitioners/plaintiffs to lead evidence is set aside and the petitioners/plaintiffs shall be entitled to lead evidence in the suit in accordance with law.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 20, 2017

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