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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1135/2017 & CM No.36896/2017 (for stay).
SUNITA KATHURIA & ANR Petitioners
Through: Mr. Sangram Patnai and Mr. Sangam
Singh, Advs.
versus
ARUN KATHURIA & ORS Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **13.10.2017**

CM No.36897/2017(for exemption).

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

CM(M) 1135/2017 & CM No.36896/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order (dated 13th September, 2017 in CS No.610439/16 of the Court of Additional District Judge-13 (Central), Tis Hazari Courts, Delhi) of dismissal of the application of the petitioners/plaintiffs to place on record the amended plaint allowed vide order dated 25th February, 2009.
4. The case of the counsel for the petitioners/plaintiffs is that though the amendments sought by the petitioners/plaintiffs was allowed on 25th February, 2009 and amended plaint filed in pursuance thereto but without incorporating the amendment which was allowed.
5. Not only so, the petitioners/plaintiffs again made an application for amendment of the plaint and which was also allowed on 10th September, 2013 and in pursuance where to also another amended plaint was filed.

6. The counsel for the petitioners/plaintiffs on enquiry states that in the amended plaint filed pursuant to the order dated 10th September, 2013, though the amendments allowed on 10th September, 2013 was incorporated but the amendments which were allowed on 25th February, 2009 were still not incorporated. It was in the aforesaid circumstances that in July, 2017 the application for filing the amended plaint incorporating the amendments allowed on 25th February, 2009 was filed.

7. The learned Additional District Judge has reasoned that the petitioners/plaintiffs having slept over his rights, cannot now be permitted to demand re-framing of issues and to start evidence *de novo*.

8. The conduct of the petitioners/plaintiffs of, inspite of purportedly pursuing the suit for eight years, not realising that the amended plaint filed did not incorporate the amendments sought and allowed indeed does not entitle the petitioners/plaintiffs to any relief. The Courts are not meant for such plaintiffs. Here also, the counsel now appearing puts the blame on the earlier counsel. We have now reached the stage where the cause of action with which the client approaches the Advocate is forgotten and during the pendency of the proceedings numerous applications, revision petitions and petitions under Article 227 of Constitution of India, cause of action whereof is neglected by the Advocates, are filed. I have already in ***Dr. Anil Gupta Vs. Panna Lal Gupta*** 2017 SCC OnLine Del 10242, order dated 8th September, 2017 in CM(M) 979/2017 titled ***Madan Gopal Singh Vs. Mahinder Kaur***, order dated 18th September, 2017 in CM(M) 1038/2017 titled ***P.S.S. Agro & Investment Pvt. Ltd. Vs. Papita Devi*** and order dated 25th September, 2017 in CM(M) 931/2017 titled ***Bharat Bhushan Vs. CM(M) 1135/2017***

Dorothy John observed that the practice of the Courts granting indulgence in such matters in the past has encouraged such negligence and unless the Courts stop granting such indulgence, the said practice affecting the administration of justice shall continue. Certainly once the Advocates know that their such mistakes are not correctable in future, they will take care while putting their signatures and read the document beforehand.

9. The counsel for the petitioners/plaintiffs earlier stated that allowing the amendment to be incorporated would also entail framing of an additional issue but now states that he will not seek any additional issue and during the course of leading his evidence, for which the suit is listed next on 25th October, 2017, if entitled to in law, lead evidence qua the amendment as well. The counsel however does not even have the issues framed in the suit, with him.

10. It just shows that the negligence continues.

11. However, to find out the possibility, whether any of the other parties to the suit are also affected thereby, the suit from which this petition arises being a suit for partition, it is deemed appropriate to issue notice to the respondents/defendants binding the counsel for the petitioners/plaintiffs to the aforesaid and on the counsel for the petitioners/plaintiffs agreeing that the petitioners/plaintiffs will be willing to pay such costs as this Court may impose.

12. Issue notice to the respondents / defendants by all modes including *dasti* and electronic and through the counsel for the respondents / defendants before the Trial Court, returnable on 24th October, 2017.

13. The counsel for the petitioners/plaintiffs is also permitted to serve as aforesaid on his own letterhead, well before the date given.

14. At this stage, the counsel for the petitioners/plaintiffs states that he has instructions from the petitioners/plaintiffs to withdraw this petition.

15. Dismissed as withdrawn.

Dasti.

RAJIV SAHAI ENDLAW, J

OCTOBER 13, 2017

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