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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **CM(M) 1278/2017**  
**INDER SINGH & ANR** ..... Petitioners  
Through: Mr. P.S. Vats & Mr. Gopal Singh,  
Advs.  
Versus  
**NARAIN SINGH** ..... Respondent  
Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

% **14.11.2017**

**CM No.40969/2017 (for exemption)**

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

**CM(M) 1278/2017 & CM No.40968/2017 (for stay)**

3. This petition under Article 227 of the Constitution of India impugns the order [dated 11<sup>th</sup> September, 2017 in Suit No.6/2016 of the Court of Additional District Judge-03 (ADJ), West District, Tis Hazari Courts, Delhi] of dismissal of an application dated 21<sup>st</sup> August, 2017 filed by the petitioners / defendants claiming the following reliefs:

“It is, therefore, prayed that this Hon’ble Court may recall its order dated 8.8.2017 and also recall all other errors / mistakes detailed in para No.5 above and correct all the errors and mistakes crept in the proceedings of the above noted case, which are result of malafide gross misrepresentations of the plaintiff; by passing appropriate orders / directions in the interest of justice in favour of the defendants / applicants and against the plaintiff and also setting aside all mistakes and errors throughout the proceedings, which are based on malafide misrepresentation of the plaintiff in the given facts and circumstances of the case.”

4. It is *inter alia* the case of the petitioners / defendants, i) that the respondent / plaintiff instituted the suit, from which this petition arises, under Section 6 of the Specific Relief Act, 1963, as far back as on 22<sup>nd</sup> February, 2008; ii) that the valuation of the suit for the purpose of court fees and jurisdiction was Rs.2 lacs and the suit was as such pending in the Court of the Civil Judge; iii) that the respondent / plaintiff amended the plaint from time to time first converting it to a regular suit for possession and thereafter enhancing the valuation of the suit for the purpose of court fees and jurisdiction from Rs.2 lacs to Rs.7,24,825/-; iv) that however, pursuant to the amendment allowing enhancement of valuation, no amended plaint was filed; v) that yet another application for amendment was filed by the respondent / plaintiff and during the pendency of the said application, the respondent / plaintiff filed an application under Order VII Rule 10A of the Code of Civil Procedure, 1908 (CPC) for return of the original plaint and documents etc. to be filed before the appropriate Court of pecuniary jurisdiction i.e. the Court of District Judge, Delhi; vi) that vide order dated 8<sup>th</sup> May, 2014, the learned Civil Judge before whom the suit was pending allowed the application under Order VII Rule 10A of the CPC and instead of only returning the plaint, sent the entire suit file to the Court of the District Judge which was the Court of minimum pecuniary jurisdiction as per enhanced valuation and without realising that the amended plaint was not on record; vii) that the learned District Judge, upon receipt of the suit, assigned the same to the Court of ADJ; viii) that an application was filed by the petitioners / defendants on 28<sup>th</sup> October, 2014 for return of the suit to the

Court of the Civil Judge for the reason of mistake aforesaid; ix) that on 28<sup>th</sup> October, 2014, another application was filed by the respondent / plaintiff to bring on record the amended plaint with enhanced valuation; x) that vide order dated 11<sup>th</sup> May, 2016, the amended plaint which had not been filed earlier, was permitted to be filed subject to payment of costs; and, xi) that the petitioners / defendants on 31<sup>st</sup> January, 2017 filed an application pointing out the aforesaid errors and which application was dismissed vide order dated 8<sup>th</sup> August, 2017.

5. I have heard the counsel for the petitioners / defendants.

6. Supreme Court recently in ***Land Acquisition Officer, Andhra Pradesh Vs. Ravi Santosh Reddy*** (2016) 14 SCC 238 has reiterated that no Revision Petition lies against an order of dismissal of an application for review or recall and the challenge if any, has to be made to the order of which review or recall was sought.

7. I have in order dated 19<sup>th</sup> September, 2017 in CM(M) No.1028/2017 titled ***Fashion to Fashion Exports Vs. MVM Enterprises*** held the said principle to be applicable also to a petition under Article 227 of the Constitution of India.

8. This petition, preferred by the petitioners / defendants herein, suffers from the same malady.

9. The application, against dismissal whereof this petition has been preferred, was for recall of the earlier order dated 8<sup>th</sup> August, 2017. The earlier order dated 8<sup>th</sup> August, 2017, though on record, has not been challenged. Even otherwise, the order dated 8<sup>th</sup> August, 2017 itself was of

dismissal of application for recall of the earlier orders and which have not been challenged.

10. The learned ADJ in the impugned order dated 11<sup>th</sup> September, 2017 has *inter alia* reasoned that the learned District Judge, on 10<sup>th</sup> May, 2014, was also apprised of the aforesaid facts but “in the interest of justice” and for the reason of the valuation of the suit post amendment which had been allowed being admittedly beyond the maximum pecuniary jurisdiction of the Civil Judge had withdrawn the suit from the Court of the Civil Judge and assigned it to the ADJ. The learned ADJ in the impugned order dated 11<sup>th</sup> September, 2017 has thus held that what was sought by the petitioners / defendants vide the application which was dismissed on 8<sup>th</sup> August, 2017 was recall also of the order dated 10<sup>th</sup> May, 2014 of the District Judge.

11. It is found that the suit for recovery of possession of immovable property which was filed nearly nine years back is still at the initial stage and even trial therein has not begun.

12. The petitioners / defendants by preferring this petition are seeking to turn back the clock and are wanting this Court to interfere with the orders which were passed as far back as on 8<sup>th</sup> May, 2014, 10<sup>th</sup> May, 2014 and 11<sup>th</sup> May, 2016 and the challenge whereto is now highly belated and barred by laches and acquiescence.

13. No error is found in the impugned order dated 11<sup>th</sup> September, 2017 directing the suit to proceed.

14. The counsel for the petitioners / defendants at this stage states that he had before the learned ADJ relied on ***Vogel Media International GMBH***

***Vs. Jasu Shah*** 115 (2004) DLT 679 and which has not been considered by the learned ADJ.

15. A Co-ordinate Bench of this Court in the said judgment *inter alia* held that the suit instituted in the Court of appropriate jurisdiction, post return of plaint, is to be deemed to have been instituted on the date of presentation in the Court of appropriate jurisdiction.

16. I am unable to understand as to how the aforesaid judgment comes to the rescue to the petitioners / defendants as far as the present controversy is concerned. However, if it is the plea of the petitioners / defendants in their written statement to the suit that the claim therein is barred by time, of course, if the said plea calls for an issue to be framed, an issue will be framed thereon.

17. There is no merit in the petition.

Dismissed.

No costs.

**RAJIV SAHAI ENDLAW, J**

**NOVEMBER 14, 2017**

‘gsr’..