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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1169/2015, CM No.28715/2015 (for stay), CM
No.31204/2016 (u/O I R-10(2) CPC) & CM No.31205/2016 (for
condonation of 170 days delay in re-filing the petition)
URMILA KAPOOR Petitioner

Through: Ms. Sonika Tyagi, Adv.

Versus

DDA & ORS Respondents

Through: Mr. Dhanesh Relan, Adv. for R-1.
Mr. Madan Lal Sharma & Mr. Varun
Nischal, Advs. for R-2&3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **13.07.2017**

1. This petition under Article 227 of the Constitution of India impugns the order dated 12th March, 2015 of learned Additional District Judge-04(NW)/Rohini Courts, Delhi in CS No.94/2014 instituted by the respondent Nos. 2 and 3 Mr. Jagbir Singh and Lakhan Pal against the petitioner/defendant inter alia for recovery of possession of immovable property.
2. Vide the impugned order the application of the petitioner/defendant under Order XVIII Rule 17 of the CPC for recall of PW1-Lakhan Pal, PW2-Surender Malik and PW3-Sunita for purposes of cross examination by the petitioner/defendant has been dismissed.
3. The petition was entertained and notice thereof issued.
4. It is however found that the application filed by the petitioner alongwith this petition being CM.No.31205/2016 for condonation of 170 days delay in refilling this petition is also pending consideration.

5. The counsel for the petitioner/defendant and the counsel for the respondent Nos. 2 and 3/plaintiffs have been heard.

6. The respondent Nos. 2 and 3/plaintiffs alongwith their reply to this petition have filed copies of the relevant order sheets of the Suit Court and which have been perused to fathom whether the impugned order requires any interference under Article 227

7. It is found i) that issues in the suit instituted in the year 2011 were framed on 15th May, 2013; ii) the order dated 17th August, 2013 records that the respondents no.2&3 / plaintiffs had filed affidavits by way of examination-in-chief of three witnesses and copies whereof were kept on record as none appeared for the petitioner / defendant on that date; iii) On 28th March, 2014 though the witnesses of the respondents no.2&3 / plaintiffs were present but adjournment was sought on behalf of the counsel for the petitioner / defendant; recording that no cogent reason had been furnished for seeking adjournment, subject to payment of costs by the petitioner / defendant of Rs.1,000/-, adjournment was granted and the suit adjourned to 20th May, 2014 for respondents no.2&3 / plaintiffs evidence; iv) on 20th May, 2014 four witnesses of the respondents no.2&3 / plaintiffs were present; the counsel for the petitioner / defendant however contended that copies of the affidavits by way of examination-in-chief of the said witnesses had not been supplied; finding that affidavits by way of examination-in-chief had been filed long back and copies thereof also kept on record owing to absence of counsel for the petitioner / defendant on the concerned date, the adjournment sought was refused and the affidavits by way of examination-in-chief of the four witnesses of the respondents no.2&3 /

plaintiffs were permitted to be tendered in evidence and opportunity granted to the petitioner / defendant to cross-examine and on failure of the petitioner / defendant to avail of the said opportunity, the witnesses discharged and the suit adjourned to 28th July, 2014 for recording of further evidence of the respondents no.2&3 / plaintiffs; v) On 28th July, 2014 the counsel for the petitioner / defendant verbally sought an adjournment to cross-examine the aforesaid four witnesses; the counsel for the respondents no.2&3 / plaintiffs stated that he had no objection provided the petitioner / defendant cross-examine the witnesses on the same date; the petitioner / defendant chose not to cross-examine on 28th July, 2014 also and again sought adjournment; in the interest of justice, last and final opportunity was granted to petitioner/defendant cross-examine PW1 and PW2 subject to payment of costs; vi) however on the next date i.e. 8th September, 2014, the counsel for the petitioner / defendant again sought adjournment which was refused and the right of the petitioner / defendant to cross-examine the said witnesses again closed; vii) on the next date of hearing i.e. 27th October, 2014 the respondents no.2&3 / plaintiffs examined another witness as PW5; viii) the suit was thereafter adjourned to 2nd December, 2014, 9th December, 2014 and 30th January, 2015 when other witnesses of the respondents no.2&3 / plaintiffs were examined.

8. It is only thereafter that on 12th March, 2015 the application against dismissal of which this petition has been filed was filed by the petitioner / defendant and which has been dismissed recording that sufficient opportunity had been granted to the petitioner / defendant to cross-examine the witnesses who were sought to be recalled and no further opportunity

could be granted.

9. As would be obvious from the above, no error can be found with the impugned order of refusing the opportunity sought by the petitioner / defendant to cross-examine the witnesses whom the petitioner / defendant had failed to cross-examine inspite of repeated opportunities.

10. The petitioner / defendant appears to be under an impression that she can proceed with the suit filed against her for recovery of possession of immovable property at her own pace and the dates of hearings before the Court are only for seeking adjournment. In fact, today also the only argument of the counsel for the petitioner / defendant is that “one more opportunity may be granted since the suit is still pending at the stage of evidence of respondents no.2&3 / plaintiffs.”

11. Opportunities for each and every step to be taken in a proceeding are not for mere asking. Once a litigant is found to have availed of sufficient opportunities and to have defaulted, that litigant in the supervisory jurisdiction of this Court cannot be granted any indulgence which will result in the entire system crumbling.

12. Such conduct of petitioner/defendant is further evident from the lackadaisical way in which this petition is filed along with application for condonation of 170 days in re-filing thereof.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 13, 2017

‘M/gsr’..