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

+ CM(M) No.1227/2015

DEEPAK GODWANI

..... Petitioner

Through: Mr. Pankaj Agarwal, Adv.

versus

RAMESH KUMAR GOYAL & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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15.11.2017

1. This petition under Article 227 of the Constitution of India impugns the orders dated 24th November, 2015 and 3rd December, 2015 in CS No.573/14 of the Court of Additional District Judge-2, North, Rohini Court, Delhi.
2. Vide the impugned order dated 24th November, 2015 evidence of the petitioner / defendant was closed and the suit adjourned to 3rd December, 2015 for final arguments.
3. Vide subsequent impugned order dated 3rd December, 2015, application of the petitioner/defendant for recall of the earlier order dated 24th November, 2015 was dismissed and the suit posted for final arguments on 11th December, 2015.
4. This petition came up first before this Court on 11th December, 2015 when, while issuing notice thereof, it was ordered that though the further trial may continue but final judgment be not passed in the suit.
5. As per office noting under the order dated 11th December, 2015 all the four respondents were reported to be served and Mr. Nitesh Sharma / Mr. Sanjay Sharma, Advocate have appeared intermittently for the respondents/

respondent no.1.

6. Today however none appears for the respondents.

7. The counsel for the petitioner / defendant has been heard and the Trial Court record also requisitioned to this Court vide subsequent order dated 16th August, 2016 has been perused.

8. The suit, from which this petition arises, was filed by the respondent no.1 Ramesh Kumar Goyal against the respondent no.2 herein Deepak Lamba, respondent no.3 herein Annu Bansal, petitioner herein Deepak Godwani and respondent no.4 herein Sudhir Saxena, Station House Officer (SHO), PS. Prashant Vihar, Delhi as far back as in October, 2010 for recovery of possession of property no.35C, Second Floor, Surya Apartment, Plot no.21, Sector-13, Rohini, Delhi – 110 085 and claiming other declarations and consequential reliefs with respect to the said property.

9. The counsel for the petitioner / defendant on enquiry states that the petitioner / defendant and the respondents no.2&3 / defendants filed a joint written statement and were jointly contesting the suit.

10. Issues are found to have been framed in the suit on 15th March, 2011 and the suit posted for evidence of the respondent no.1 / plaintiff to 18th April, 2011.

11. The respondent no.1 / plaintiff closed his evidence on 9th January, 2015 and the suit adjourned to 20th February, 2015 for defendants' evidence with direction to the defendants to supply advance copy of affidavit of evidence at least seven days prior to the date of hearing.

12. The defendants in the suit are informed to have already examined six witnesses.

13. The suit was listed on 8th September, 2015 for remaining defence evidence when neither any witness was present nor the counsel for the petitioner / defendant appeared and adjournment was sought. The suit was accordingly adjourned to 5th October, 2015 for remaining defendants' evidence.

14. On 5th October, 2015 also neither any witness of the defendants appeared nor had any been summoned and on request of the counsel for the defendants the suit was adjournment for remaining defendants' evidence to 14th October, 2015 as last opportunity and subject to cost of Rs.2,000/-.

15. On 14th October, 2015 though one Ashwani Bhardwaj was stated to be present as a witness for the defendants but the counsel for the defendants stated that the witness had not brought the relevant record and as such the suit was adjourned to 30th October, 2015 for entire remaining defence evidence, again by way of last opportunity. It was further made clear that no further adjournment shall be granted at any cost and the date of 30th October, 2015 had been given as per convenience of the counsel for the defendants.

16. On 30th October, 2015 three witnesses namely Shri Vinod Khanna, President of Society of Surya Apartments, Rohini, Delhi, Shri Chandan Prakash, LDC from the House Tax Department, Municipal Corporation of Delhi (MCD) and Mr. Manoj Kumar, Patwari from the office of Sub Divisional Magistrate (SDM), Alipur were present. On statement of the counsel for the defendants, Shri Chandan Prakash was dropped and discharged and Shri Manoj Kumar stated that the relevant record was with the SDM, Kanjhawala. Finding that inconsistent stands were being taken in this regard, the presence of SDM, Kanjhawala and SDM, Alipur before the

Court on 24th November, 2015 was directed. Shri Amit Talwar aforesaid sought adjournment stating that he is an Advocate and busy in his own professional matters. Accordingly, yet again the suit was adjournment to 24th November, 2015 for defence evidence as last opportunity.

17. On 24th November, 2015, the two other witnesses were examined and discharged and since no other witness was present inspite of ample opportunities having been given, defence evidence was closed.

18. There is no reason to refer to the order dated 3rd December, 2015 inasmuch as Supreme Court in ***Land Acquisition Officer, Andhra Pradesh vs. Ravi Santosh Reddy*** (2016) 14 SCC 238 has held that no challenge lies to an order of dismissal of an application for recall and it is only the challenge to the order which was sought to be recalled which has to be considered.

19. The counsel for the petitioner / defendant, on enquiry as to who else remains to be examined, states that two witnesses namely Harit Shandilya and Anuj Bhalla who were in possession of the suit property at relevant time remained to be examined. The counsel for the petitioner / defendant states that the name of Harit Shandilya was mentioned in the list of witnesses filed and Anuj Bhalla was subsequently permitted to be examined but he cannot give the particulars of the order when Anuj Bhalla was permitted to be examined. On further enquiry, it is stated that both the said witnesses are not private witnesses and were to be summoned. The counsel for the petitioner / defendant states that an application for summoning of Harit Shandilya and Anuj Bhalla was filed on 19th November, 2015 for obtaining *dasti* summons for 24th November, 2015 but no orders were passed on the application.

20. The noting on the order dated 30th October, 2015 of the Suit Court is of summons sought having been issued on 3rd November, 2015. The counsel for the petitioner/defendant is totally clueless whether in the application pursuant to which summons were issued on 3rd November, 2015 the summons for the said Harit Shandilya and Anuj Bhalla were sought or not.

21. It is not understandable that once an application was filed and in pursuance to which summons were issued on 3rd November, 2015, why did the petitioner / defendant if required to examine Harit Shandilya and Anuj Bhalla, did not obtain summons for them on the said date and waited till 19th November, 2015.

22. The counsel is also unable to tell as to on which issue evidence of the said witnesses is to be led.

23. To say the least, the petition is half baked and after obtaining stay of proceedings in the suit which were ripe for final arguments and having the file of the suit requisitioned in this Court, the petitioner / defendant has not pursued the petition with any seriousness.

24. There is no merit in the petition which is dismissed with costs of Rs.50,000/- for delaying the proceeding in the suit by two years.

25. Payment of aforesaid costs to the respondent no.1 / plaintiff on the next date of hearing before the Trial Court is made a pre-condition for petitioner / defendant and respondents no.2&3 / defendants further participating in the suit.

26. The Trial Court file requisitioned in this Court be returned forthwith to the Trial Court.
27. The counsel is unable to tell the next date in the suit before the Trial Court.
28. The parties to appear before the Trial Court on 5th December, 2017.

RAJIV SAHAI ENDLAW, J

NOVEMBER 15, 2017
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