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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 13th March, 2018

+ CM(M) 78/2018 & CM No.2182/2018

INDRA GUPTA

..... Petitioner

Through: Mr. Sanjeev Mahajan with
Mr. Dhruv Mohan & Ms. Rakhi
Sharma, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY AND ORS

....Respondents

Through: Ms. Arti Bansal, Advocate for-
R-1.
Ms. Gaganpreet Chawla, Adv.
for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The background facts against which the present petition has come up before this Court were noted in the order dated 19.01.2018 which to the extent relevant here, reads thus:-

“The civil suit (CS 328/14 – new no.7460/2016) was instituted by the petitioner in the year 2001. The issues were framed on 12.05.2006. Undoubtedly, the petitioner has dragged feet and has not led evidence in spite of various opportunities being given. Though the request for adjournment on some of the dates may be justified, the need having arisen because of the illness of the petitioner herself or that of her counsel, there is no escaping the impression that the petitioner has not been

very diligent or vigilant in prosecuting the case. It is against this backdrop that by order dated 25.05.2017, the Civil Judge closed the opportunity for evidence and later by order dated 22.11.2017 the application for recall of the said order was also declined.

At the hearing the learned counsel for the petitioner submitted that he undertakes, on instructions, from the petitioner that she would appear as her own witness without making any request for adjournment on a date that may be given for the purpose, her affidavit having already been submitted, it only requiring to be tendered and thereafter the petitioner offering herself for cross-examination. He submitted that at the same time the petitioner would take steps to have summons issued to the Sub-Registrar for production and proof of certain documents duly registered (General Power of Attorney and Will), the only other witness to be examined. He also submitted that the petitioner is ready to bear the costs for the delay which has occurred.

The first respondent / DDA has appeared through counsel on advance notice.

Issue notice to the other parties through counsel returnable for 13.03.2018.

The trial court, in the meanwhile, shall not pass any final order.

Dasti.”

2. All the respondents have been served but only first and second respondents have appeared there being no appearance on behalf of others. It is stated that other respondents/defendants are not contesting the suit.

3. Having heard the learned counsel on both sides and having gone through the record, this Court is of the opinion that in view of the undertaking submitted and recorded on 19.01.2018, one last opportunity be granted to the petitioner to lead evidence restricted to

what was mentioned in the said proceedings dated 19.01.2018 quoted above, though subject to certain conditions, which are added as under:-

- (i) The plaintiff (petitioner) shall pay Rs.25,000/- each as costs to the first and second respondents on the next date of hearing.
 - (ii) The trial court will fix an appropriate date suitable to its calendar for giving opportunity to the plaintiff to lead and conclude evidence.
 - (iii) Steps shall be taken by the plaintiff in advance for service of the witness from the office of sub-Registrar who only needs to be examined other than the plaintiff herself.
 - (iv) It shall be the obligation of the plaintiff to remain present on the first call of the case with her counsel duly briefed and instructed ready to proceed with the matter.
 - (v) In case of any further default, the opportunity hereby renewed shall be treated as having been exhausted.
4. The petition and the pending application stand disposed of in above terms.
5. *Dasti* under the signatures of Court Master.

R.K.GAUBA, J

MARCH 13, 2018

srb