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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 23rd February, 2018

+ CM(M) 195/2014 & CM No. 3443/2014

PAWANJIT SINGH BAWA

..... Petitioner

Through: Mr. Ajoy B. Kalia, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY & ANR

..... Respondents

Through: Mr. Ajay Verma with Ms.
Diviani Khanna, Advocates for
R-1.

Mr. D. Rajeshwar Rao,
Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. After some hearing, the counsel for the petitioner submits, on instructions, that he may be allowed to withdraw the present petition whereby the order dated 25.01.2014 of the first appellate court in appeal (MCA No. 13/2013) was challenged, the application of the first respondent Delhi Development Authority (DDA), a defendant in the suit, under Order IX Rule 13 of Code of Civil Procedure, 1908 (CPC) dated 15.07.2011 having been allowed and the order dated 23.08.2011 of the senior civil judge dismissing the said application was set aside, thereby vacating and setting aside the *ex parte* judgment dated 03.06.2011 passed earlier on the file of civil suit (S no. 557/99) of the

petitioner and reviving the proceedings in the said civil suit.

2. During the course of hearing on the petition at hand, it came to the fore that DDA having suffered the proceedings in the civil suit *ex parte* on 04.05.2010, had reappeared on 30.10.2010, on which date the evidence of the plaintiff (PW-1) was recorded and yet the opportunity was declined to DDA (and also to the other defendants) to lead evidence in defence, presumably for the reason that they had been set *ex parte* earlier and the case was taken to the stage of *ex parte* final arguments. It also came to the fore that pursuant to the observations in the subsequent order dated 13.04.2011 of senior civil judge, opportunity was given and the plaintiff filed an amended plaint with amended affidavit in evidence and certain other documents, without taking recourse to the provision contained in Order VI Rule 17 CPC, the response of the defendants, though present at that stage, not even having been called for.

3. The learned counsel for the petitioner fairly agrees that both the procedure of denying the opportunity to the defendants to lead evidence as per proceedings recorded on 30.10.2010 and taking on board the amended plaint in the manner done under the cover of orders dated 13.04.2011 and 29.04.2011 were improper and unknown to law. He fairly concedes that on account of these defects the proceedings with effect from 30.10.2010 are vitiated. It is trite that party impleaded as a defendant, even if proceeded at one stage *ex parte* can always reappear and participate in the subsequent proceedings without moving application for *ex parte* order to be set aside.

4. Thus, while the petition and the application filed therewith are dismissed as withdrawn, it is clarified, lest there be any doubts, that the defendants in the suit will be entitled to participate from the stage where the case was, as on 19.05.2010, which is the date of hearing immediately after 04.05.2010 when the *ex parte* order was passed. The trial court will proceed accordingly.

5. Needless to add, all interim orders passed in these proceedings stand vacated.

R.K.GAUBA, J.

FEBRUARY 23, 2018

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