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

+ CM(M) 185/2015 and CM APPL.4116/2015

ANUVESH CHAUDHARY

..... Petitioner

Through: Nemo.

versus

S P SINGH & ORS

..... Respondents

Through: Mr. Naresh Kaushik, Advocate with
Mr. Akash Mahopatra, Adv. &
Ms. Manju Jaglan, Adv. for R-1,2 & 5.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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13.04.2018

The civil suit (Suit No.139/2005) was instituted on 11.07.2005 by Vinod Kumar Chaudhary, the late husband of the petitioner. He died on 17.08.2009 and on the application under Order XXII Rule 3 of the Code of Civil Procedure, 1908 (CPC) moved prior to the date of hearing 27.01.2010, the petitioner and other legal heirs of original plaintiff were substituted by order dated 04.03.2010, she also having been allowed on her application under Order XXXII CPC to be the next friend of the minor children, who joined her as co-plaintiffs by such substitution.

Pertinent to add here that in the civil suit originally instituted, decree was sought to the effect of a mandatory injunction for restoration of the possession of the wet canteen run by the original plaintiff on the campus of the respondent educational institution, this besides the relief in the nature of

damages claimed for wrongful dispossession. Pertinent to note further that her presence, in person, in the court, at the time of proceedings dated 04.03.2010, is duly recorded in the order sheet of the day. On that date her counsel made a statement, on instructions, that the prayer for mandatory injunction may be deleted. The request for deletion of the prayer clause for mandatory injunction was allowed and, thus, the case remained pending for further proceedings *qua* the other relief, *i.e.* damages. The matter kept hanging fire till 27.09.2010 when it was submitted on her behalf that the statement made by her on 04.03.2010 to above effect was “*disputed*”.

The issue remained pending, as per the proceedings of 18.07.2011 for clarification, the efforts for amicable resolution of the dispute in the meanwhile not having borne fruit, her counsel revising the position on 25.01.2012 by submitting that the statement had been made on 04.03.2010 out of ignorance. Finally, the prayer for withdrawal of the statement was declined by order dated 30.07.2014, which is under challenge by the petition at hand.

On the matter being called out, there is no appearance on behalf of the petitioner. The matter has been pending for the last three years in this Court, the issue having been pending before the trial Court since 27.09.2010. There is no reason why it should be deferred yet again.

Having heard the learned counsel for the respondents and having gone through the record, this Court finds no substance in the petition. The petitioner was duly assisted by her advocate of her choice. In the given facts and circumstances, it has to be assumed that she made a conscious decision not to insist on the prayer for mandatory injunction. There is

nothing on record from which ignorance could be inferred. The petitioner having withdrawn the prayer for mandatory injunction cannot be allowed to take an about turn reviving the proceedings in above context.

The petition and the application filed therewith are dismissed.

APRIL 13, 2018

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CM(M) 185/2015

R.K.GAUBA, J.

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