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

+ CM(M) 353/2015 & CM No. 7511/2015

BAL KRISHAN SHARMA & ANR Petitioners

Through: Petitioners in person.

versus

ANUP SHARMA & ORS

..... Respondents

Through: Ms. Isha Khanna for Ms. Nidhi
Raman, Advocate for R-7.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **24.04.2018**

The petitioners are defendants in the civil suit (CS no. 147/14) which was instituted by the first respondent in April, 2014. The copy of the plaint originally filed shows that the plaintiff seeks injunction – prohibitory and mandatory, the grievances giving rise to the cause of action claimed pertaining to lock having been put in the way upto the upper floors, the plaintiff claiming to be the owner in possession of basement, ground floor and third floor with terrace rights in property described as House no. H-95, Lajpat Nagar-I, New Delhi. It was stated that the first petitioner Bal Krishan Sharma is in possession of the second floor in the property while the other defendants (that include the other petitioner) are his family members. The dispute relates to the portion described as common staircase.

The petition challenged the orders dated 25.11.2014, 26.11.2014 and 12.01.2015 passed by the trial court on the file of the said civil suit. By the

first said order an amended plaint was taken on record. By the second said order three applications of the defendants (the petitioners) seeking rejection of the plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908 were dismissed. And, by the last said order, application for review of the previous order was declined, this in addition to another amendment being allowed, though upon no objection from the defendants.

The matter has been hanging fire in this Court for the last three years. The counsel for the petitioners is not available. It is noted that the request was made for adjournment on behalf of the counsel on the last date also. There is no good reason why the matter should remain pending further.

Arguments have been heard in the course of which the first petitioner making his submissions placed reliance on *Ramnik Vallabhdas Madhavani vs. Taraben Pravinlala Madhvani* (2004) 1 SCC 497.

Having heard the submissions and having gone through the record, this Court finds no substance in the petition.

It is clear from the proceedings recorded that the amended plaint was taken on record by order dated 25.11.2014 inasmuch as there was concededly a deficiency in the cause of action clause in the plaint originally presented, it not setting out the timelines specifically. Though this was one of the grounds on which prayer was made for the plaint to be rejected, the trial judge within her judicial discretion had called for better particulars and it is in that background that the amended plaint, carrying detailed particulars of the cause of action incorporated in para 11, was taken on record. The ruling cited at bar does not apply inasmuch as it is not a case where any new plea was being taken. The judicial discretion exercised by the trial court

does not call for any interference in these proceeding by this Court.

There is no substance in the grounds on which the prayer for rejection of the plaint is still pressed. The deficiency in the cause of action clause has been made good by the amended plaint being permitted to be taken on record. It appears, *prima facie*, that there is no ground on which the suit can be held to be time-barred and otherwise, if the facts can show to the contrary, the defendants can always press for an issue (which would be mixed question of law and fact) to be framed and to be adjudicated at the trial.

The objection that the suit simpliciter for injunction cannot be maintained since there is a cloud on the right of the plaintiff qua the common staircase does not appeal to this Court at this stage. As noted by the trial court in the order dated 28.11.2014, the defendants (the petitioners) have not yet come up with any document whereby their contrary claim to the exclusive ownership of the third floor may be substantiated as might have a bearing on the right to the use of the staircase.

For the above reasons, the petition and the pending application is dismissed.

R.K.GAUBA, J.

APRIL 24, 2018

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