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

+ **RSA 91/2018 & C.M.No.24490/2018**

LILAWATI (DECEASED) THR LRS. Appellant
Through: Mr. V. K. Sharma, Advocate.

Versus

PAWAN KUMAR THAKRAN & ORS. Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER
% **01.06.2018**

This Second Appeal impugns an order dated 01.02.2018 passed in RCA No.54979/16 by the learned Additional District Judge, Dwarka Courts, Delhi, upholding the order dated 18.07.2016, whereby the appellant's suit being Civil Suit No. 1403/16 was dismissed on account of it being barred by the law of limitation.

The appellant's case is that she had purchased the suit property bearing Plot No.489, Village Palam, Delhi on 31.01.1991 for a consideration of Rs.25,000/-. Since she was allegedly dispossessed from the suit property, she had filed a police complaint being FIR No. 101/93 under sections 420/465/471/468 IPC with Police Station Dabri. Thereafter, she did not pursue the matter. The learned counsel for the appellant submits that the suit was filed in the year 2006 because only in the year 2006, she came into possession of the documents purporting to transfer rights to her in the suit

property. Thus the suit should be construed to have been filed within limitation.

The Trial Court relied upon the judgment of the Supreme Court in ***M/s India House vs. Kishan N. Lalwani 2003 AIR (SC) 2084*** to hold that the period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or deviated from the equitable considerations. It held:

“13. Section 3 of the Limitation Act is peremptory which provides for the dismissal of the suit which has been filed beyond the period of limitation even in the case where the defense of the limitation has not been set up as a defense. The cause of action accrued to the Plaintiff In the year 1993. In view of section 9 of Limitation Act, mere the fact that the documents pertaining to the suit property were in the possession of the 10 of case FIR no. 101/93 would not extend the period of limitation under any of the provisions of the Limitation Act. The present suit came to be filed on 06.12.2006 for inter-alia relief of possession. The limitation period for claiming the possession on the basis of title is 12 years which in the present case has to be counted from 1993. At the time when the present suit was filed, it was barred by limitation.....”

The Court would note that as per the settled provisions of law, the suit for claiming the possession on the basis of the title is within 12 years of the cause of action having arisen in this case; the cause of action arose when the FIR was filed in 1993; the suit was not filed within 12 years, therefore, it was dismissed as being barred by time. The First Appellate Court too held the same view. In particular, it observed as under:-

“16. Similarly, observation of Ld. Trial Court to the effect that cause of action for filing the suit had accrued in the year 1993 from the alleged date of dispossession and prescribed period

of 12 years for seeking recovery of possession having started, no subsequent inability/disability would stop the continuous running of time as per Section 9 of the Limitation Act can not be faulted either. Plaintiff's suit filed on 07.12.2016 was therefore filed beyond the prescribed period of limitation and contention raised by appellant's counsel by adverting to para no. 8 of the written submission for asserting that plaintiff's suit was filed within prescribed period of 12 years from the date of legal notice dated 12.12.2005 is a plea of desperation.”

In view of the above, no question of law arises in this appeal, hence it is dismissed alongwith the pending application.

NAJMI WAZIRI, J.

JUNE 01, 2018

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