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

+ CM(M) 515/2018 and CM Nos. 18178-18179/2018
MATHURA DUTT & ANR Petitioners
Through: Ms. Kashish Behl, Adv.

versus

RENU Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **04.05.2018**

The petitioners are defendants in the civil suit (CS DJ ADJ 34A/2014 – 15207/2016) pending in the court of Additional District Judge-04, South West, Dwarka, New Delhi. They are aggrieved by the orders dated 18.01.2018 and 26.04.2018 whereby their right to lead further evidence has been closed, their prayer by application under Order XVIII Rule 17 of the Code of Civil Procedure, 1908, (CPC) and review application having been declined.

The counsel for the petitioners has been heard.

Record perused.

It is clear from the documents filed on record that the civil suit for specific performance was instituted by the respondents (plaintiffs) on 28.11.2013. Issues were framed on 22.04.2016. The plaintiffs adduced evidence promptly, the opportunity for that party having been closed by order dated 26.08.2016. Thereafter, the case came to be listed for the evidence of the defendants i.e. the petitioners herein.

The petitioners failed to file any affidavit in evidence on 27.09.2016 which was the first date fixed for the purpose. The matter was adjourned on their request to 28.10.2016. The affidavits of two witnesses were filed and the matter was adjourned to 08.11.2016. On the said date, one of the said witnesses (DW-1) was examined, the other witness Mathura Dutt stated to be unwell and on that account case was again adjourned to 15.12.2016. On the said date as well, the witness could not turn up and, thus, the trial Judge finding no good reasons, closed the opportunity for evidence of defendants, listing the case for final arguments to be heard on 06.02.2017.

On the adjourned date i.e. 06.02.2017, the petitioners had engaged another counsel who moved an application under Order XVIII Rule 17 CPC. The said application was allowed and the opportunity for defendant's evidence was revived. It is pursuant to the said order that the remaining witness was cross-examined on 17.07.2017 and 12.12.2017. The trial Judge thereafter closed the evidence of the defendants, there being no move on the part of the petitioners for any other witness to be produced or summoned before the court.

Against this backdrop, the petitioners moved yet another application under Order XVIII Rule 17 CPC which did not find favour with the Additional District Judge and was dismissed the same by order dated 18.01.2018. The petitioners thereafter, moved an application for review which also was declined by order dated 26.04.2018.

Having heard learned counsel for the petitioner, this court finds no good reason why the opportunity should be renewed yet again. The petitioners have had the advantage of sufficient opportunity to adduce their evidence. The opportunity had been earlier closed. The trial Judge was indulgent enough to grant similar application under Order XVIII Rule 17 CPC moved earlier. There is no just or sufficient reason why the said opportunity was not availed to adduce the remaining evidence. There is no error or infirmity in the impugned order. The petition and the applications filed therewith are dismissed.

R.K.GAUBA, J.

MAY 04, 2018/uj

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