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

+ CM(M) 605/2016

PRITPAL MALHOTRA

..... Petitioner

Through: Mr. Baldev Raj & Ms. Shikha Tyagi,
Advs.

versus

SATINDER SINGH OBEROI

..... Respondent

Through: Mr. Prithpal Singh Nijjar & Mr.
Vikrant Panchanda, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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15.02.2018

The civil suit from which the present proceedings arise was filed in 1999 by Lochan Singh, predecessor-in-interest of the respondent, seeking reliefs in the nature of decree of possession and mesne profits qua the subject property, in which the petitioner herein is alleged by the plaintiff to be an unauthorised occupant, it being the defence of the petitioner that he is in occupation as a tenant.

During the pendency of the suit, Lochan Singh executed a document on 17.05.2007 in the nature of Gift Deed whereunder the respondent would claim right, title and interest of the subject property to have been transferred in his favour. On an application under Order 22 Rule 10 read with Order 1 Rule 10 and Section 151 of the Code of Civil Procedure, 1908 (CPC), the respondent was impleaded as co-plaintiff in the suit by order dated

22.08.2008. Some amendments to the pleadings on both sides took place at that stage, the written statement submitted by the petitioner herein on 28.04.2009 taking exception to the effect of the document described as Gift Deed.

The original plaintiff Lochan Singh died on 16.12.2013. Thereafter the other plaintiff i.e. the respondent moved an application for deletion of his name, the prayer in that regard having been declined by the trial court on the objection of the petitioner (defendant of the suit) on the ground that non-impleadment of other legal heirs of Lochan Singh would bring in the effect of non-joinder.

Eventually, on petition (C.R.P. 93/2014) preferred by the respondent herein, allowed by a consent order dated 18.11.2014, the respondent was substituted in place of erstwhile plaintiff Lochan Singh though liberty having been given to the respondent (the defendant) to file an amended written statement to bring in plea about the invalidity of the Gift Deed dated 17.05.2007. The consent order specified the period within which such amendment could be brought in as six weeks of the said order.

On 19.02.2015, the respondent (now the sole plaintiff) moved an application, seemingly taking objection in anticipation to non-filing of the amended written statement. In the wake of such application, the petitioner moved application under Order 6 Rule 17 CPC seeking to file amended written statement along with application seeking condonation of delay. The applications have been dismissed by the trial Judge by order dated 05.10.2015 primarily on the ground that the move is belated with reference

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to the time specified in the order dated 18.11.2014 of this Court.

Having regard to the fact that the amendment could be brought in within the period of six weeks of the said order dated 18.11.2014 and primarily the fact that daughter of the counsel had expired on 01.01.2015, the delay deserves to be condoned. The impugned order is, thus, set aside. This grants the application under Section 5 of Limitation Act which was submitted by the petitioner.

The matter relating to the applications under Order 6 Rule 17 CPC for amendment of the pleadings is remitted to the trial Judge for consideration and adjudication on merits. Needless to add, nothing in this order will be taken as expression of opinion on the merits of the said proposal for amendment.

Given the old pendency of the said case, it is hoped and expected that the trial Judge will take an early decision on the application preferably on the next date already fixed before the said Court, this, of course, contingent and dependent on cooperation of the counsel on both sides.

R.K.GAUBA, J

FEBRUARY 15, 2018

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