

\$~3

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

Decided on: 24th January, 2018

+ CM(M) 518/2017 and CM 17528/2017

HANIF (DELETED) & ORS Petitioners
Through: Mr. Anirudh Sharma, Advocate

versus

SANT SINGH BAL Respondent
Through: Mr. Dinesh Singh Chaudhary,
Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The petitioners were not defendants in the civil suit (now registered as CS SCJ 84034/2016) when it was originally presented against one Hanif shown as second defendant, the prayer being for decree of possession, payment of rent and *mesne* profits in respect of property described as shop no.8, situated in Khasra No.27, Village Saidulajab, Opposite Saket, New Delhi, the respondent being the plaintiff. The cause title (of the parties) is defective as the reference to the name of deceased Hanif is incorrect and misleading.

2. The plaintiff statedly realised the need to implead the petitioners as defendants upon an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (CPC) being moved on their behalf seeking impleadment on the ground that they were the party in possession and use of the premises in question. Thus, the plaintiff

moved an application under Order VI Rule 17 CPC for suitable amendments to the plaint and also to the array of parties. The amendment was allowed by order dated 20.02.2016.

3. It is by virtue of the aforesaid order that the petitioners, then applicants under Order I Rule 10 CPC, became defendant nos.2 to 7 in the suit. The trial court called them upon to submit their written statement. It is clear from a perusal of the proceedings recorded thereafter that the petitioners dragged their feet avoiding to file their written statement. The opportunity for filing written statement stood closed by order dated 03.05.2016. Though the plaintiff of the suit had submitted at that stage that he was entitled to a decree under Order VIII rule 10 CPC, the matter was adjourned as time was sought by him to come with further documents and for argument to be addressed on the said issue.

4. The matter kept hanging fire thereafter for some reason or the other till the petitioners moved an application under Section 151 CPC on 03.09.2016 seeking recall of the order whereby their right to file written statement had been closed. The said application was eventually dismissed by the trial court by the order dated 04.01.2017 which is impugned by the petition at hand.

5. Though it is clear from perusal of the record that the petitioners are guilty of intentional delay, there being virtually no substance or merit in the reasons set out by them for the default in submitting the written statement, the counsel for the respondent has fairly conceded at this stage that in order to avoid further delay in adjudication, one last opportunity may be granted to the petitioners to file their written

statement and for such purposes suitable terms may be enforced as deemed proper by the court.

6. In the above facts and circumstances, the impugned order is set aside. The right of the petitioners to file written statement is revived subject to costs of Rs.25,000/- with the rider that they shall file their written statement on or before 19.02.2018, as is stated by both sides to be the date of hearing fixed before the trial court. The payment of costs will be a pre-condition to the written statement being entertained. In case costs are not paid or the written statement is not filed within the time allowed, the trial judge will have the jurisdiction and power to strike out the defence of the petitioners and proceed further in accordance with law.

7. The petition and the applications stand disposed of in above terms.

JANUARY 24, 2018

yg

R.K.GAUBA, J.