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

+ LA.APP. 279/2017 & CM No.31263/2017 (for stay)

SURESH KUMAR & ORS Appellants

Through: Mr. Abhimanyu Singh, Adv.

Versus

RAJIV BHAYANA & ANR Respondents

Through: Mr. S.K. Rout, Adv. for R-1.

Mr. Yeeshu Jain & Ms. Jyoti Tyagi,
Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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26.09.2018

1. This appeal under Section 54 of the Land Acquisition Act, 1894 impugns the judgment and decree [dated 24th May, 2017 in LAC No.2A/10/09 (New No.260/2016) of the Court of Additional District Judge-02, West] on a Reference under Section 30-31 of the Act, finding the respondent no.1 to be entitled to the compensation and holding the three appellants to be not entitled to any compensation for the land acquired.
2. This appeal came up before this Court first on 30th August, 2017 when the counsel for the respondent no.1, though on caveat, did not appear and the appeal was adjourned to 11th September, 2017 when notice thereof was ordered to be issued and subject to the decretal amount in terms of the impugned judgment being deposited in this Court, execution of the impugned judgment was stayed. The amount so deposited in this Court was ordered to be kept in a fixed deposit and the trial court record was also requisitioned.
3. The Court Master has reported that no amount has been deposited in this court.

4. The counsel for the respondent no.2 Union of India (UOI) states that the amount has been deposited in the Reference Court.
5. It is expected that the Reference Court is keeping the decretal amount in a maximum interest bearing account and if not already done so, the same be done now.
6. The counsel for the appellants and the counsel for the respondent no.1 have been heard and the trial court record requisitioned perused.
7. The need however to go into the detailed facts is not felt inasmuch as it is found that the appellants, during the pendency of the proceedings before the Reference Court, at the stage of evidence of the respondent no.1, moved an application for producing additional documents and which application was dismissed by the Reference Court. The appellants preferred CM(M) No.571/2016 to this Court against the order of dismissal of the said application and which petition was allowed vide order dated 15th February, 2017; the order of the Reference Court of dismissal of the application was set aside and the application for producing additional documents allowed subject to payment of costs of Rs.10,000/- by the appellants to the counsel for the respondent no.1. During the pendency of CM(M) No.571/2016, the proceedings before the Reference Court remained stayed.
8. The order dated 15th February, 2017 was received by the Reference Court on 25th February, 2017. After 15th February, 2017, the proceedings were listed before the Reference Court on 9th March, 2017 when none appeared for the appellants and the counsel for the respondent no.1 stated that the costs imposed by the High Court had also not been paid. The Reference Court adjourned the proceedings to 30th March, 2017 for compliance by the appellants of the order of the High Court. On 30th March,

2017 also, none appeared for the appellants and the counsel for the respondent no.1 stated that the costs imposed of Rs.10,000/- had still not been paid. The Reference Court posted the Reference, which otherwise was ripe for hearing, for final arguments on 18th May, 2017. On 18th May, 2017 also, none appeared for the appellants before the Reference Court and after hearing the counsel for the respondent no.1, the Reference was posted for orders on 24th May, 2017. The counsel for the appellants in the interregnum moved an application but which was not entertained, being without any affidavit and without mentioning any provision of law. On 24th May, 2017, the appellants filed an application under Section 151 CPC, explaining their earlier absence and seeking an opportunity to, in compliance of the order dated 15th February, 2017 in CM(M) No.571/16, pay the costs and tender, the documents which had been permitted by the High Court, into evidence. However, the Reference Court dismissed the said application and also pronounced the judgment in the Reference and which judgment is impugned in this appeal.

9. The counsel for the appellants on enquiry, whether the appellants, in this appeal, have also impugned the separate order also dated 24th May, 2017 dismissing the application under Section 151 CPC, draws attention to ground 'C' in the memorandum of appeal.

10. The counsel for the respondent no.1 states that the appellants ought to have filed a CM(M) petition against the separate order dated 24th May, 2017 dismissing the application under Section 151 CPC and cannot challenge the said order in this appeal.

11. No merit is found in the aforesaid contention of the counsel for the respondent no.1. Section 105 of the CPC permits non-appealable orders

made in the course of the proceedings to be challenged in the appeal against the final judgment in the proceedings. The appellants are thus within their right to, in this appeal, also impugn the separate order dated 24th May, 2017 dismissing the application of the appellants for an opportunity to tender the documents permitted into evidence and to pay the costs.

12. The reason given by the appellants for default in appearance and compliance of the order dated 15th February, 2017 of this Court in CM(M) No.571/2016 was that the appellants, for the purpose of filing and pursuing CM(M) No.571/2016, had engaged a different advocate from the advocate before the Reference Court and owing to lack of communication between the two advocates, the advocate conducting the Reference did not come to know of the order of the High Court and remained under the impression that CM(M) No.571/2016 was pending and hence did not appear or take requisite steps.

13. The counsel for the respondent no.1 also agrees that CM(M) No.571/2016 was pending for about two years and there was stay of proceedings before the Reference Court during the pendency of CM(M) No.571/2016.

14. In these circumstances, the explanation given for non-appearance of the counsel for the appellants before the Reference Court and non-compliance of the order dated 15th February, 2017 in CM(M) No.571/2017 ought to have been accepted and it is felt that the order of the Reference Court of dismissal of the application is too harsh in the facts and circumstances of the case.

15. It cannot also be lost sight of that the documents which this Court permitted by allowing CM(M) No.571/2016 are vital to the adjudication of

the Reference and comprise *inter alia* of certified copies of the revenue records and sale deeds in favour of the appellants and their predecessors with respect to the land which was subsequently acquired. The said records are determinative of title, particularly vis-a-vis the claim of the respondent no.1 on the basis of Agreement to Sell, Power of Attorney and without any entries in the revenue record in his own favour. It is felt that owing to the miscommunication between the counsels engaged by the appellants, the appellants should not be deprived of consideration of their claim for compensation for land compulsorily acquired.

16. In fact, I have enquired from the counsel for the respondent no.1, whether the said documents, considering the nature thereof, instead of being required to be formally proved and which would entail remand of the Reference, can be read in this Court so that the appeal can be decided forthwith. The counsel for the respondent no.1 has however not agreed.

17. It is for this reason that it is not felt necessary to make any other observations on the merits of the impugned judgment.

18. The order dated 24th May, 2017 of dismissal of the application under Section 151 CPC of the appellants is set aside and the said application is allowed. Resultantly, the impugned judgment is also set aside.

19. The proceedings are remanded to the Reference Court for decision afresh after granting an opportunity to the appellants to pay the costs earlier imposed vide order dated 15th February, 2017 in CM(M) No.571/2016 of Rs.10,000/- and further costs of Rs.30,000/- i.e. total Rs.40,000/- to the counsel for the respondent no.1 before the Reference Court on the next date of hearing. The parties are directed to appear before the Reference Court on 15th November, 2018, on which date the counsel for the appellants shall pay

the costs aforesaid and the Reference Court is requested to fix a date for evidence of the appellants on the additional documents which the appellants were permitted to file vide order dated 15th February, 2017 in CM(M) No.571/2016. It is made clear that the appellants shall be entitled to only one opportunity and if do not examine all the witnesses and prove all the documents on the said date by producing them at their own responsibility, including by service of summons if any, the appellants shall not be entitled to any further opportunity. Only if any of the served witness fails to turn up or evidence cannot be recorded or completed on the said date for reasons not attributable to appellants, will the matter be adjourned. The counsel for the respondent no.1 on enquiry states, that the respondent no.1 does not want to lead any evidence in rebuttal and will only cross-examine the witnesses if any produced by the appellants. The counsel for the appellants on enquiry states that the additional documents permitted vide order dated 15th February, 2017 in CM(M) No.571/2016 are already on record.

20. The appeal is disposed of.

21. Trial court record requisitioned in this Court be returned forthwith.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 26, 2018

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