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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1407/2018 & CM APPL. 48468-48469/2018
SUDAMA PRASAD GUPTA Petitioner
Through: Mr. Ashish Virman, Adv.

versus

VINAY KUMAR GUPTA Respondent
Through: Mr. Manu Sishodia, Adv.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

20.12.2018

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Submissions have been made on behalf of either side.

Vide the present petition, the petitioner assails the impugned order dated 12.10.2018 of the learned ADJ-11, Central District in Suit No.2095/2018 whereby an application under Order 7 Rule 11 of the CPC that is stated to have been filed by the petitioner herein as defendant to the said suit has not been disposed of it having been observed by the learned trial Court to the effect:

“I heard the arguments on the application under Order 7 Rule 11 CPC made on behalf of the defendant.

In the application, defendant has prayed for rejection of plaint on the following grounds:-

(1) the suit has not disclosed cause of action

(2) Suit is bad for want of the necessary parties in the present suit.

(3) the suit is barred by Law of Limitation

During the course of arguments, Ld. Counsel for plaintiff pointed out that vide order dated 23.04.2018 passed by the

Hon'ble High Court, the matter has been remanded back to this Court for the purpose of permitting the plaintiff to adduce the evidence of an attesting witness and also for permitting the defendant to file and adduce the evidence in support thereof. It was also directed that evidence already recorded in the suit shall be read at the time of final hearing and the defendant was directed to file written statement within 4 weeks. Accordingly, trial court has been directed to complete the trial within six months from the date of the said order. However, I note that already six months have lapsed, nonetheless, issues have not been framed in this matter till date despite filing of WS.

In view of the above stated directions given by the Hon'ble High Court and the circumstances as above, I observe that it is not permissible for me to dispose of the aforesaid application at this stage and therefore, I am straightaway framing the issues as under:

- (1) Whether the plaintiff is entitled for decree of possession against the defendant as prayed for ? OPP*
- (2) Whether the plaintiff is entitled for permanent injunction against the defendant as prayed for ? OPP*
- (3) Whether the plaintiff is entitled for damages/mesne profit @ Rs. 1500/- per month as prayed for? OPP*
- (4) Whether the plaintiff is entitled to interest @ 15% per annum towards use and occupation charges from the date of filing of the suit till realization? If yes, at what rate and for what period? OPP.*
- (5) Whether the plaintiff has no locus standi to file the present suit ? OPD*
- (6) Whether the suit is bad for non-joinder of necessary parties? OPD.*
- (7) Whether the suit is barred by Law of Limitation ? OPD*
- (8) Relief, if any*

*No other issue either arises or is pressed for. Let list of witnesses be filed by both the parties within 15 days. Copies of evidence affidavits of all PWs be supplied to the other side at least 15 days prior to the next date of hearing.
Put up for PE on 05.11.2018.”*

Undoubtedly, vide order dated 23.04.2018 in RFA 831/2016 between the very same parties on the RFA having been filed by the plaintiff of the said suit arrayed as the respondent to the present petition, there were direction on remand to the learned trial Court to the effect:

“In the circumstances of the present case, the matter deserves to be remanded to the Trial Court, both for the purpose of permitting the Plaintiff to adduce the evidence of an attesting witness as also permitting the Defendant to file its defence and adduce evidence in support thereof. It is thus directed that the evidence already recorded in the suit shall be read at the time of final hearing. The Defendant is permitted to file its Written Statement within 4 weeks. The Plaintiff may produce the attesting witness to prove the Will, who may be cross examined by the Defendant. If the Defendant wishes to cross examine any other witness of the Plaintiff, they shall be summoned by the Trial Court. the Defendant is thereafter permitted to adduce its evidence. The Trial Court shall endeavour to complete the trial within six months from today.”

with the two cross appeals filed by either side having been allowed vide the said judgment.

On behalf of the petitioner it has been submitted that an application under Order 7 Rule 11 of the CPC had been filed by the petitioner i.e. the defendant in the suit on 05.07.2018 though the written submissions had been filed sometime in May, 2018 as per verification

clause on the copy of the written statement on the record. It has been submitted on behalf of the petitioner that even notice of the application under Order 7 Rule 11 had been issued and it is submitted that vide proceedings dated 12.09.2018 before the learned trial Court as indicated vide the copy of the order dated 12.09.2018 placed as Annexure-10 to the petition, it was indicated that the plaintiff i.e. the respondent herein had filed the reply to the application under Order 7 Rule 11 of the CPC as well and the matter had been fixed for arguments on the said application on the date 12.10.2018 on which date the impugned order had been passed whereby the learned trial Court observed to the effect that in view of the order dated 23.04.2018 and order of this Court adverted to hereinabove, it was not permissible for the learned trial Court to dispose of the application at the present stage and thus issues were framed. It has been submitted on behalf of the petitioner that the application under Order 7 Rule 11 of the CPC could have been moved at any stage and the same requires to be adjudicated upon.

On behalf of the respondent Learned counsel for the respondent has placed reliance on the proceedings dated 05.11.2018 before the learned trial Court to contend that even a witness had been examined as PW-5, cross examined and discharged indicating thereby that five witnesses have already been examined. It has been submitted on behalf of the respondent that the petitioner herein was represented before the learned trial Court on the date 05.11.2018 and the petitioner has sought to assail the order dated 12.10.2018 only in November, 2018 deliberately to delay the proceedings.

It is essential to observe that in view of the application under Order

7 Rule 11 of the CPC on the record of the learned trial Court, the adjudication thereon is essential despite the factum of the order dated 23.04.2018 of this Court directing the time-frame. The learned trial Court is stated to be seized of the matter on the date 21.12.2018. The learned trial Court is thus directed to dispose of the application under Order 7 Rule 11 of the CPC before any further witness is examined in the matter.

The petition is disposed of.

Noting stated hereinabove shall amount to any expression on the merits or demerits of the application under Order 7 Rule 11 of the CPC.

ANU MALHOTRA, J

DECEMBER 20, 2018

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