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

+ **C.R.P. 180/2019**

SANDEEP GOEL & ANR

..... Petitioners

Through: Mr R. R. Malik, Advocate.

versus

M/S MERA BABA REAL ESTATE PVT LTD  
& ORS

..... Respondents

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

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**14.08.2019**

**CM APPL. 36420/2019**

1. For the reasons stated in the application, the delay in filing is condoned.

**CM No. 36421/2019**

2. Allowed, subject to all just exceptions.

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3. The petitioners have filed the present petition, *inter alia*, impugning an order dated 19.11.2018 passed by the learned ADJ-02 (North), Rohini Courts, Delhi in C.S. No. 59912/2016 captioned '*Sandeep Goel & Anr. v. M/s Mera Baba Real Estate Pvt. Ltd.*'. By the impugned order, the Court has directed that the petitioners' application filed under Section 340 of the Code of Criminal Procedure, 1973 (CrPC) shall be considered at the time of final disposal of the said suit.

4. The petitioners claim to have booked two plots in a project known as Divine City, Gannaur, Sonipat, Haryana. The petitioners also claim that they had made part payment against the said booking in the year 2006.

5. The petitioners filed a suit for recovery of the booking amounts – CS No.517/2015 – on 26.04.2011. The said suit is at the stage of recording of the defendant's evidence. The matter was listed on 13.09.2017 and the defendant's witness (DW-1) was present in the Court. However, the petitioners failed to cross-examine the said witness. Accordingly, the right of the petitioners (plaintiffs therein) to cross-examine DW-1 was closed. The petitioners had, thereafter, approached this Court by way of a Revision Petition, which was dismissed with liberty to the petitioner to approach the Trial Court by filing an appropriate application.

6. Accordingly, the petitioners had filed an application for re-opening the evidence of DW-1 and for permission to cross-examine the witness. The said application was allowed and DW-1's cross-examination was fixed for 23.10.2017. DW-1 did not appear on the said date and subsequently, filed a medical certificate. According to the petitioners, DW-1 was present in the Court premises but had not appeared. The petitioners also claim that the medical certificate submitted by him was fake. In this context, the petitioner had filed an application under Section 340 of the CrPC.

7. This Court is informed that the cross-examination of DW-1 is now scheduled for 13.11.2019.

8. This Court finds no reason to interfere with the impugned order. The question whether an application under Section 340 of the CrPC is to be entertained would also depend on whether it is in the interest of justice to do so. In the present case, the initial delay in completion of defendant's

evidence was on account of reasons attributable to the petitioners. It is seen that subsequently, the same was further delayed on account of the file being misplaced.

9. This Court is of the view that insistence that such applications be heard first, tends to delay the main proceedings. The decision of the Trial Court to consider it at a later stage cannot be faulted.

10. The petition is, accordingly, dismissed.

**VIBHU BAKHRU, J**

**AUGUST 14, 2019**

**MK**