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

\+ **CM(M) 1238/2019 and CM APPL. 38010/2019**

RAKESH OBEROI ..... Petitioner

Through: Mr. Rajshekhar Rao, Mr. Bhavay Sethi, Mr. Anandh and Mr. Raghav, Advocates (M: 9811389644).

versus

PAWAN KUMAR SARASWAT & ORS ..... Respondents

Through: None.

3. **WITH**

\+ **CM(M) 1240/2019 and CM APPL. 38016/2019**

M/S SHRI SAI SURGICAL & ANR ..... Petitioners

Through: Mr. Rajshekhar Rao, Mr. Bhavay Sethi, Mr. Anandh and Mr. Raghav, Advocates (M: 9811389644).

versus

PAWAN KUMAR SARASWAT ..... Respondent

Through: None.

4. **WITH**

\+ **CM(M) 1241/2019 and CM APPL. 38019/2019**

RAWEL SINGH BHATIA (DECEASED) THR LRS ..... Petitioners

Through: Mr. Rajshekhar Rao, Mr. Bhavay Sethi, Mr. Anandh and Mr. Raghav, Advocates (M: 9811389644).

versus

PAWAN KUMAR SARASWAT & ORS. ..... Respondents

Through: None.

5. **WITH**

\+ **CM(M) 1242/2019 and CM APPL. 38021/2019**

M/S BHAVUK ENTERPRISES & ORS. ..... Petitioners

Through: Mr. Rajshekhar Rao, Mr. Bhavay Sethi, Mr. Anandh and Mr. Raghav, Advocates (M: 9811389644).

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versus

PAWAN KUMAR SARASWAT ..... Respondent

Through: None.

6. **WITH**

\+ **CM(M) 1243/2019 and CM APPL. 38026/2019**

M/S PAUL SON & SURGICALS & ANR. ..... Petitioners

Through: Mr. Rajshekhar Rao, Mr. Bhavay Sethi, Mr. Anandh and Mr. Raghav, Advocates (M: 9811389644).

versus

PAWAN KUMAR SARASWAT ..... Respondent

Through: None.

7. **WITH**

\+ **CM(M) 1245/2019 and CM APPLs. 38065/2019, 38066/2019**

M/S K K ENTERPRISES & ANR. ..... Petitioners

Through: Mr. Rajshekhar Rao, Mr. Bhavay Sethi, Mr. Anandh and Mr. Raghav, Advocates (M: 9811389644).

versus

PAWAN KUMAR SARASWAT ..... Respondent

Through: None.

8. **AND**

\+ **CM(M) 1247/2019 and CM APPLs. 38068/2019, 38069/2019**

LOKESH KALRA & ANR ..... Petitioners

Through: Mr. Rajshekhar Rao, Mr. Bhavay Sethi, Mr. Anandh and Mr. Raghav, Advocates (M: 9811389644).

versus

PAWAN KUMAR SARASWAT & ORS. ..... Respondents

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER

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1. The present petitions have been filed challenging the impugned orders dated 6th July, 2019 by which the application under Order IX Rule 7 CPC filed by the Petitioners herein was rejected by the ld. Trial Court. The case of the Petitioners, who are Defendants in the suit filed by Respondent No.1/Plaintiff – Mr. Pawan Kumar Saraswat *(hereinafter 'Plaintiff')*, is that the non-appearance before the ld. Trial Court was caused due to mis-communication by the Petitioners' counsel who had informed the Petitioners that the suit is likely to be dismissed for non-prosecution. The contention of the ld. counsel for the Petitioners is that even after the Petitioners were proceeded against *ex-parte*, on legal advice they did not even participate in the proceedings or cross-examine the Plaintiff and the evidence of the Plaintiff has now been closed and the suit is listed for final arguments. He submits that due to the fault of the ld. counsel, the client should not suffer and the Petitioners may be given an opportunity to lead their evidence in the matter.

2. This Court has perused the impugned order as also some of the orders passed by the ld. Trial Court on earlier occasions. There is no doubt that the application under Order IX Rule 7 CPC was filed at least a year later in most of the petitions and in one of the petitions, the delay in filing of the application is more than 500 days. The suits are of 2011 vintage and the Plaintiff has already led evidence. The Petitioners have also filed written statements in the suit and raised various legal and other pleas. In so far as the Petitioners are concerned, even if they were proceeded against *ex-parte*, there was no reason whatsoever for them to not participate in the proceedings to cross-examine the Plaintiff's witness. Having not done so, the Petitioners have been grossly negligent and these are not cases where the

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Court needs to take a lenient view of the matter.

3. Mr. Rajshekhar Rao, ld. counsel has vehemently contended that in respect of property bearing municipal No. (old). 29/2, 29/4, 29/5, 29/46, 29/47, 29/48, 29/50, 29/51, 29/52, 29/53, 29/54, 29/55 and 7/36 of 1/3rd undivided share bearing municipal old numbers mentioned above and New Municipal No. 1933 (part) Shiv Shankar Market, Agrahara, Fountain, Chandani Chowk, Delhi *(hereinafter 'suit property')*, there is a serious issue as to whether the Plaintiff – Mr. Pawan Kumar Saraswat has any rights whatsoever.

4. It is the case of the Petitioners that they have legally and validly acquired title through one M/s Manish Fincon Pvt. Ltd who had purchased the suit property vide a sale deed dated 15th April, 2000, executed by Ms. Madhu Rathi - the wife of Mr. N.L. Rathi, the original owner. Ms. Rathi had allegedly executed the said sale deed on the basis of the Will dated 15th May, 1995 and it is not in dispute that M/s Manish Fincon Pvt. Ltd claimed to have acquired title in the suit property from Ms. Rathi.

5. It is further submitted by Mr. Rao, ld. counsel that the Plaintiff – Mr. Pawan Kumar Saraswat has, in fact, filed a separate suit against M/s Manish Fincon Pvt. Ltd seeking cancellation of the sale deed in favour of M/s Manish Fincon Pvt limited and other reliefs. Accordingly, he submits that in respect of the same land multiple suits have been filed and there is a serious possibility of conflicting judgments being rendered. In the present suits, M/s Manish Fincon Pvt. Ltd, to whom the Petitioners trace back title, has not been impleaded as a Defendant.

6. In the above circumstances, this Court, vide order dated 26th August 2019, had directed the Petitioners to issue intimation to the Plaintiff through

counsel appearing for the Plaintiff in the ld. Trial Court. It is submitted that service has been effected upon the ld. counsel and the acknowledgment thereto by Mr. Amit Mehra, ld. counsel has been shown to the Court. However, the Plaintiff has chosen not to appear before the Court.

7. There are multiple suits in respect of the same property. The main suit would be the one in which the sale deed in favour of M/s. Manish Fincon has been challenged. All the others claim title through the said company. The land is valuable and if these cases are heard and decided seperately, conflicting judgements could be rendered. The Petitioners have neither filed evidence nor have cross examined the Plaintiff. However, the onus on the Plaintiff to establish his rights does exist. Under these circumstances the following directions are passed: -

a) The written statement of the Petitioners which is on record shall be considered by the ld. Trial Court at the time of final adjudication, in so far as the legal pleas raised therein are concerned. The submission of the Petitioners at the stage of final adjudication shall be restricted to the legal pleas, including non-joinder, limitation etc.

b) The suit by Mr. Pawan Kumar Saraswat against M/s Manish Fincon Pvt. Ltd, being Suit No. 613841/2016, is also at the stage of final arguments and is pending. The Petitioners are permitted to seek consolidation of the present suits along with the said suit in order to obviate any chances of conflicting orders/judgments being rendered.

8. The petitions and all pending applications are disposed of in the above terms. *Dasti.*

PRATHIBA M. SINGH, J.

SEPTEMBER 12, 2019/MR