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

Date of Decision: 28th August, 2019

+ **CM (M) 569/2017 and CM APPL. 19576/2017**

NARENDRA SHARMA & ANR Petitioners

Through: Mr. Ajit Singh, Advocate (M: 9990525091).

versus

VEENA SOLANKI & ORS Respondents

Through: Mr. S.S. Jauhar, Advocate for R- 1 to 3.

Mr. F.S. Chauhan, Advocate for R-2 to 5 (M: 9871054777).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition challenges the order dated 1st April, 2017 passed by the Id. Trial Court. Vide the said, order the Trial Court took the written statement of the Petitioner who was the Defendant No. 3 in the original suit off the record.

2. The brief background is that a suit came to be filed on behalf of four of the Plaintiffs viz., Ms. Karuna Singh, Mr. Kailash Singh, Ms. Manju Singh and Smt. Kishori Devi against five Defendants viz., Veena Solanki, Jaiveer Singh Solanki, Narender Sharma, Moral Properties Private Limited and Shanti Mann seeking the following reliefs:

“1. To declare the letters of the Plaintiffs dated 5/4/2004 of resignations from directorship, no-objections to transfer/mutation of property, transfer of shares etc. and the Memorandum of Understanding

dated 10/4/2004 and handing over of the Share certificates, transfer deeds, title deeds of land and other papers of the Company as null and void and of no consequence.

2. to declare the Plaintiffs the directors of M/s Moral Properties Private limited and owners of the whole of the equity share capital of the said Company and entitled to the control of the management of the said Company.

3. to declare the Plaintiffs entitled to re-possession of the share certificates and transfer deeds in respect of the originally allotted 36 shares of the Company and re-possession of the title deeds of whole of land of the Company at Village Chawla, New Delhi and also entitled to re-possession of all the other papers of the Company.

4. to grant possession jointly to the Plaintiffs over the land bearing Khasra Nos. 48//3/2(4-10), 19(4-04), 20(4-04), 21 /1(2-08), 23(4-16) measuring 21 Bighas 12 Biswas, Khasra Nos. 48//11/2(3-11), 2/1(3-06), 9/2(1-10) measuring 8 Bighas 07 Biswas and Khasra Nos. 34//21/2(2-08), 22(4-16) measuring 7 Bighas 04 Biswas all in the revenue estate of Village Chhawla, New Delhi

5. ad-interim-exparte order of stay in favour of the Plaintiffs restraining the Defendants from selling, alienating, gifting, mortgaging, creating third party interest or parting with possession of the above said land situated at Village Chhawla, New Delhi and any other properties of the defendant no. 4 company during the pendency of the suit

6. mesne profits of the land in favour of the Plaintiffs, during the pendency of the suit.”

It was recorded vide order dated 17th March, 2009 that Defendant No. 3 i.e. the Petitioner herein - Mr. Narendra Sharma and the Defendant No. 4 company – Moral Properties Private Limited, shall adopt the written

statement of Defendant No. 1 - Veena Solanki. The said order reads as under: -

“Learned counsel appearing for defendants No. 1, 3 and 4 states that written statement has been filed by defendant No.11 and that defendants No.3 and 4 will be adopting the same written statement.

Replication to the written statement of defendant No. 1 has been filed.

List before the Joint Registrar for filing of documents and for admission/denial, on April 14, 2009.”

3. The above said order was appealed by the Plaintiffs in FAO (OS) No. 300/2009 and vide order dated 24th September 2009, the written statement was permitted to be adopted subject to payment of Rs. 20,000/- as costs to the Plaintiffs. The said order reads as under:-

“4. At the threshold, learned counsel for the Respondent states that the Respondent shall pay the Plaintiff a sum of Rs 20,000/- as Costs for filing Written Statement on behalf of Respondent No.3 and 4. He states that the Cost will be paid within two weeks. The payment of Cost will adequately meet the ends of justice.”

4. Thereafter, while the matter was pending in the High Court, in 2013 the Defendant no.3 placed on record an additional set of documents. In 2015, the Defendant Nos. 3 and 4 sought to file an independent written statement on record along with fresh documents.

5. The Trial Court, thereafter, came to be seized of the matter owing to the change in pecuniary jurisdiction and vide the impugned order, it initially allowed the written statement to be taken on record on 22nd July 2016. The said order reads as under:

“Arguments heard on application under Order VII Rule 1 & 1A CPC for taking on record the accompanying written statement and the accompanying documents on behalf of the defendant no. 3 and 4.

Counsel for the defendants no. 3 and 4 submits that earlier counsel did not draft and file the written statement despite repeated requests.

Counsel for the plaintiff submits that he has no objection if the application is allowed.

In view of the submissions and averments made in the application, the application is allowed. Written Statement be taken on record.

Put up for consideration on all pending applications on 13.09.2016”

However, thereafter, the Defendants 1 and 2 moved an application bringing all the facts and sought recall of the said order. The Trial Court, then, by the impugned order allowed the application and took the written statement off the record. The reasoning given by the Id. Trial Court is as under: -

“ It is evident from above that defendant no.3 was well aware of the proceedings and further this conduct shows that written statement already accepted by defendant no(s). 3 and 4 was to be written statement of defendant no(s). 3 and 4. These defendants are not permitted to come to the court after the expiry of seven years with a separate written statement on a contention that learned counsel earlier represented them has defaulted in filing written statement. None of the parties are permitted to circumvent the orders of Hon’ble High Court dated 24.09.2009 providing specific time limit. Even the plaintiffs cannot consent for taking of written statement for whatsoever reason after the period of 7 years. This would tantamount to overriding of order of Hon’ble High Court 24.09.2009.

In the application under consideration, the aspersion attributed to the earlier counsel Sh. S.S. Johar, Advocate are unfounded and without any basis because defendant no.3 has recorded personal attendance in order sheet dated 23.11.20010 at time of admission-denial of document without raising even iota of contention on filing of written statement.

In view of the above discussion, written statement of defendant no(s). 3 and 4 cannot be taken on record.
The application stands allowed and order dated 22.07.2016 stands recalled.”

6. Today, submissions have been made on behalf of Defendant Nos. 3 and 4, i.e. the Petitioners, Defendant Nos. 1 and 2 by Mr. Jauhar, Advocate and the Plaintiffs as well.

7. The crux of the issue appears to be that Defendant Nos. 3 and 4, after having adopted the written statement of Defendant No. 1 as recorded in orders dated 17th March, 2009 and 24th September, 2009, wish to now file a fresh written statement. The suit is of 2005. The Defendant No. 3 had personally participated in the admission/denial of documents as well. The orders dated 17th March 2009 of the Ld. Single Judge and the order dated 24th September 2009 of the Ld. Division Bench are clear. In the former, the defendants 3 and 4 were allowed to adopt the written statement of Defendant nos 1 and 2. In the latter, Rs. 20,000/- was imposed as costs to permit the said defendants to adopt the written statement of Defendant nos 1 and 2. These orders are of 2009 and Defendant nos 3 and 4 cannot seek to change the position as prevalent since 2009. The application seeking to place on record a fresh written statement is in 2015 and was hopelessly barred by time and the same could not have been allowed. Accordingly, the Trial Court order, to the extent, that it does not take the written statement of

Defendant Nos. 3 and 4, afresh, on record, does not deserve to be interfered with.

8. However, in so far as the additional documents filed by the Defendant Nos. 3 and 4 in the year 2013 and 2015 are concerned, these are documents which have been filed in respect of the company Moral Properties Private Limited. The said documents according to the Defendant Nos. 1 and 2 cannot be taken on record as the same have been taken possession of by Defendant No. 3 in an illegal and unlawful manner. The question as to how the Defendant nos 3 and 4 came into possession of the said documents, cannot be gone into at this stage. The said documents have now been placed on the Court record. Since, the question in the plaint is in respect of management and control of Defendant No. 4 - Moral Properties Private Limited and all these documents relate to various minutes of meetings and other records relating to the company, the same would be relevant for the adjudication of the disputes. The Ld. Trial court would consider the same at the time of final adjudication. The Defendant No. 3 is permitted to participate in the suit proceedings and shall also be permitted to cross examine witnesses and make submissions before the court.

9. The CM (M) 569/2017 is disposed of with these observations. All pending applications also stand disposed of.

PRATHIBA M. SINGH
JUDGE

AUGUST 28, 2019
MR