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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM (M) 1622/2019 and CM APPL. 49085/2019

GYANENDER SINGH

..... Petitioner

Through: Mr. Deepak Khosla, Advocate (M:
9811218591).

versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Shivam Yadav, Advocate for Mr.
Yeeshu Jain, Advocate for L&B (M:
8171725595).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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10.02.2020

1. The order sheets of the Trial Court have been placed today. The present petition has been filed challenging the impugned order dated 25th September, 2019 by which the Petitioner/Plaintiff's evidence has been closed by the Trial Court.
2. In the earlier round of litigation, the issue in respect of limitation was adjudicated by this Court vide order dated 7th December, 2018 in RFA 707/2018. The said order reads as under:

1. On the last date of hearing i.e. on 27.8.2018, and which was the first date of hearing in the appeal, the following order was passed:-

"C.M. No.34430/2018(for condonation of delay)

1. In view of the fact that review petition filed by the appellant/plaintiff was pending before the trial court and was decided in terms of the order dated 17.7.2018, therefore, delay of 372 days in filing the appeal is condoned subject to just exceptions.

C.M. stands disposed of.

+RFA No.707/2018

2. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the judgment of the Trial Court dated 8.5.2017 by which trial court has dismissed the suit as time barred by applying Article 113 of the Limitation Act, 1963 and held the suit filed on 7.11.2005 as barred by limitation because demolition of the property of the appellant/plaintiff took place on 5.10.2002 and consequently the suit filed after three years on 5.10.2005 i.e on 7.11.2005 was time barred.

3. Counsel for the appellant/plaintiff argued, and rightly so, that in the present case a notice under Section 80 CPC was given since the defendants are essentially the Government of NCT of Delhi, and the legal notice under Section 80 CPC is dated 3.9.2005, i.e. if the period of two months from 3.9.2005 is added to 5.10.2005, then the limitation period would expire on 5.12.2005 whereas the subject suit has been filed on 5.11.2005.

4. As per Section 15(2) of the Limitation Act when before filing of a suit, a legal notice is required to be served, then the period of such notice has to be excluded from computing the limitation. Accordingly in the present case limitation would expire on 5.12.2005 and since the suit has been filed on 7.11.2005, trial court has possibly wrongly dismissed the suit as time barred.

5. At this stage, it is noted that respondents/defendants did not lead evidence and therefore their evidence was

closed, and counsel appearing for the respondents/defendants states that the respondents are in the process of filing an appeal to set aside the order of the trial court closing the right of the respondents/defendants to lead evidence.

6. At request, list on 7th December, 2018."

2. Today, it is agreed that the impugned judgment of the trial court dismissing the suit as time barred is illegal, and therefore such finding is set aside and it is held, and as agreed, that the suit will be held to be within limitation.

3.- The counsel appearing for the respondents states that written statement was filed in the suit, and this Court notes that this is so recorded in para 5 of the impugned judgment. No evidence was however led by the respondent no. 1/defendant no. 1.

4. As agreed, the impugned judgment of the trial court is set aside, but exactly three opportunities are granted to each of the parties now to lead evidence of their witnesses and thereafter the trial court will decide the suit in accordance with law. In case any of the parties fail to complete evidence-in-chief in three dates of hearings, then the right of that party to lead evidence shall be closed.

5. Parties to appear before the District and Sessions Judge, Central District, Tis Hazari Courts, Delhi, on 9th January, 2019 and the District and Sessions Judge will now mark the suit for disposal to a competent court in accordance with law and the observations made in the present order."

3. As can be seen from the above, after deciding the issue of limitation in favour of the Plaintiff, the Court had granted three opportunities to each of the parties to lead evidence.

4. It is the submission of ld. counsel for the Petitioner that all the three

opportunities were not exhausted after remand. The matter was listed before the Trial Court for the first time on 9th January, 2019. From the said date, until 18th July, 2019, service of various Defendants was underway. The matter was fixed for Plaintiff's evidence for the first time on 18th July, 2019. The said order reads as under:

“None has appeared on behalf of defendant no. 2 despite service. However, no adverse order is passed. In terms of the order dated 07/12/2018 passed by the Hon'ble High Court of Delhi, the matter is now fixed for PE. The plaintiff will comply with the order of the Hon'ble High Court of Delhi in leading the evidence. Put for PE on 25/09/2019.”

5. He submits that the Plaintiff has examined Mr. Anil Kumar on 25th September, 2019 and wanted an opportunity to examine Sh. S.C. Gupta, the Valuer. The said permission has not been given and the matter has been adjourned for Defendant's evidence.

6. Since the order of this Court dated 7th December 2018, clearly held that three opportunities were to be granted to each of the parties, the only effective date when the Plaintiff has had an opportunity is 25th September, 2019. Thus, the remaining orders cannot be considered to be opportunities to lead evidence as service was not completed in those hearings. Accordingly, the Petitioner is permitted to examine Sh. S.C. Gupta, the Valuer on the next date before the Trial Court. Thereafter, the Defendants' evidence shall commence.

7. The petition with all pending applications is disposed of.

PRATHIBA M. SINGH, J.

FEBRUARY 10, 2020/MR/A.S.