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

+ **CM (M) 90/2020**

SURESH KUMAR & ANR.

..... Petitioners

Through: Mr. Bimlesh Kumar, Mr. Sushil Kumar Singh, Mr. Jogender Singh and Mr. Tahseen M. Siddiqui, Advocates. (M:9654244955)

versus

KAMAL BAHYANA & ORS.

..... Respondents

Through: Mr. Sanjay Shah, Advocate for R-1. (M:9891111475)
Mr. Shekhar Kumar, Advocate for R-4. (M:9871008884)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER
28.01.2020

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CM APPL. 3148/2020 (exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM (M) 90/2020

2. This petition is a gross abuse of process of law. The contention of ld. counsel for the Petitioners is that there are two suits being CS No.376/2015 and CS No.378/2015, now renumbered as CS No.9712/2016 and CS No.12903/2016 respectively. Vide order dated 13th July, 2016 it was directed that the evidence in CS No. 376/2015 would also be read in CS No. 378/2015. According to ld. counsel for the Petitioners, the Trial Court has now refused to read the evidence led in CS No. 376/2015, in CS No. 378/2015 and hence the present petition.

3. Ld. counsel for Respondent No.1 submits that the only attempt of the

Petitioners is to delay the matter, inasmuch as there are orders passed by the Court holding that the evidence in CS No. 376/2015 would be read in suit CS No. 378/2015. He has shown to the Court a copy of the order dated 27th August, 2019 passed by the Trial Court to urge that both the matters have been listed together before the same Court and the Court has never held that the evidence would not be led.

4. A perusal of the order dated 13th July, 2016 shows that the order is very categorical that evidence in CS No. 376/2015 shall be read in CS No. 378/2015. The order reads as under:

“Another Suit bearing No. 376/15 is also pending before this court. Since both the cases relate to the same property hence both the cases shall be taken up together forthwith and the Suit No. 376/15 shall be the leading case in which evidence shall be recorded and copies of the same shall be placed in the Suit bearing No. 378/15 (i.e. present suit) being permitted to be adopted.

DIW1 Suresh Gupta has been examined, cross examined and discharged. No other witness is present or summoned. Evidence of Suresh Gupta is hereby closed.

Be listed along with connected / leading case for entire evidence of Vijay Kumar and Kamal Bhayana on 18.4.2017. Affidavit of evidence be filed on or before 1.3.2017 with advance copy to the counsel for Suresh Gupta.”

5. Thereafter, it appears that due to the evidence of the Petitioners having been closed, the Petitioners had approached this Court in CM (M) 1102/2017 titled *Suresh Kumar Gupta v. Vijay Kumar & Ors.* wherein the Petitioner’s evidence was again permitted to be led. The operative portion

of the said order reads as under:

“5. In above facts and circumstances, the impugned order whereby the opportunity for remaining evidence was declined to the petitioner, is set aside. The learned trial Court is directed to fix the case for a suitable date convenient to its calendar to facilitate the examination of the remaining witnesses subject, of course, to the relevancy of such witnesses being considered first.

6. The petitioner shall be entitled to proper and effective opportunity to do so but will be duty bound to take all the necessary steps well in time for the presence of the witnesses to be secured.”

6. Subsequently, the Petitioner’s evidence has also been led in the matter. The petition, in paragraph 2 (d) avers that the Trial Court refused to read evidence of CS No. 376/2015 in CS No. 378/2015. Ld. counsel for the Petitioners is unable to show any order to this effect. The order dated 27th August, 2019 passed in both the suits shows that, in fact, the Defendant sought an adjournment on the last date and the matter was adjourned to 28th January, 2020 i.e. today. Today, it is informed that the matter has been adjourned for final arguments to 28th April, 2020. In effect, by filing this petition, without any basis, the Petitioners have delayed the adjudication of the suit.

7. Accordingly, the present petition is dismissed, however, with costs of Rs.20,000/- to be paid to Respondent No.1. The same shall be tendered within four weeks from today.

PRATHIBA M. SINGH, J.

JANUARY 28, 2020/dk