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

Date of decision: 5th August, 2021

+ **C.R.P. 55/2021 & CM APPLs. 24362-24363/2021**

SH. DINESH YADAV & ANR. Petitioners

Through: Mr. Rajeev Khanna, Advocate.

versus

PARAMJIT KAUR Respondent

Through: Mr. Bhuvneshwar Tyagi and Mr.
Vinayak Kamra, Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. The present petition challenges orders dated 19th January, 2021 and 22nd March, 2021, by which the Petitioners'/Defendants' (*hereinafter*, "*Defendants*") application under Order IX Rule 7 CPC was rejected by the Trial Court.
3. A civil suit, being **CS DJ No.666/2020** titled ***Mrs. Param Jeet Kaur v. Dinesh Yadav and Anr.*** was filed by Mrs. Paramjeet Kaur i.e., the Plaintiff and the Respondent herein (*hereinafter*, "*Plaintiff*"), seeking recovery of possession of the servant quarter/room on the 2nd Floor, Laaj Building, Doriwalan, New Rohtak Road, New Delhi-110005 (*hereinafter*, "*suit property*"), mesne profits and damages.
4. It is the case of the Plaintiff that she is the owner of the suit property and that since Defendant No.1/Petitioner No.1 - Mr. Dinesh Yadav was working with the husband of the Plaintiff, he was permitted to live in the suit property. Defendant No.2/Petitioner No.2 is the wife of Defendant No.1. As

per the Plaintiff, the Defendants started creating nuisance in the suit property and started claiming rights in the same. Accordingly, the suit for possession was filed, seeking the following reliefs:-

“(i) pass a decree of Possession in favour of the Plaintiff and against the Defendants directing Defendants to hand over vacant and peaceful possession of the servant quarter/room which is R/O 2ND FLOOR, LAAJ BUILDING, DORIWALAN, NEW ROHTAK ROAD, DARIWALAN, NEW DELHI-110005 which is as red coloured portion in site-plan.

(ii) Pass a decree of Recovery of Mesne Profits /Damages in favour of the Plaintiffs and against the Defendants, directing the Defendants to pay to the Plaintiff of Rs 2,00,000/- alongwith 10% interest till handing over the premise.

(iii) Grant Costs.”

5. Summons were issued in the said suit on 18th November, 2020. The Defendants entered appearance on 19th December, 2020 and the matter was adjourned to 19th January, 2021. The Defendants did not file their written statement in the matter. On 19th January, 2021, the Court closed the Defendants' right to file the written statement and proceeded *ex-parte* against the Defendants. The matter was posted for 12th March, 2021 for the Plaintiff's evidence. The Plaintiff's evidence in chief was recorded. On 22nd March, 2021, the Defendants' counsel appeared and sought an adjournment on the ground that he was recently engaged. Since Defendant No.2 was present in person, her statement was recorded on oath. However, Defendant No.2 refused to sign the statement which was recorded, leading to

observations being made by the Trial Court in order dated 22nd March, 2021. On the same date, the Defendants' application under Order IX Rule 7 CPC was heard and dismissed, which order has also been impugned in the present petition.

6. Mr. Rajeev Khanna, Id. Counsel appearing for the Defendants/Petitioners submits that it was due to the mistake of the counsel that the written statement was not filed and the Defendants/Petitioners should not be made to suffer for that. He relies upon the averments made in the application under Order IX Rule 7 CPC in support of his pleas. He further submits that the suit itself was filed only in November, 2020 and the first appearance was in December, 2020. Thus, there was no delay in filing the written statement and the *ex-parte* order against the Defendants ought to be set aside.

7. On the other hand, Mr. Tyagi, Id. Counsel for the Plaintiff/Respondent, submits that the conduct of the Defendants does not entitle them to any relief. Defendant No.2, in fact, refused to sign her statement, which was recorded on oath, which is clear from the order dated 22nd March, 2021. The Defendants were well aware of the fact that the written statement ought to have been filed and no application has been filed for permission to file the written statement on record. The right to file the written statement was closed way back in January, 2021 and the matter needs to proceed further. An application under Order 12 Rule 6 CPC has also been filed which is now likely to be taken up by the trial court. Thus, the present petition is liable to be dismissed.

8. This Court has perused the various orders passed by the Trial Court. A perusal of order dated 19th December, 2020 clearly shows that on the said

date, the Defendants had appeared and time was granted to file the written statement. Admittedly, the written statement was not filed and on 19th January, 2021, the following order was passed by the Trial Court:

“Matter is fixed for replication, admission/denial of the documents and framing of issues. However, it is submitted by Ld. Counsel for the plaintiff that he has not received the copy of the written statement till date.

Heard and perused the file.

Perusal of the file reveals that defendant has not been appearing from the last two dates neither he has filed any written statement till date. In view of the same, right of the defendant to file written statement is closed and he is proceeded ex-parte.

Put up for exparte PE on 12.03.2021.”

9. Thus, the Defendants’ right to file the written statement was closed almost 8 months ago. Thereafter, on 22nd March, 2021, Defendant No.2 appeared in person and made the following statement on oath:

“Statement of Smt. Sushila W/o Shri Dinesh Yadav, R/o 2nd Floor, Laaj Building, Doriwalan, New Rohtak Road, Karol Bagh, Delhi-11005.

On oath

I am defendant No.2 in the present case. I state that I am not the owner of the suit property i.e. servant quarter/room on the second floor, Laaj Building, Doriwalan, New Rohtak Road, Karol Bagh, Delhi-110005 and I am in possession of the entire second floor.

My husband used to work for the husband of the plaintiff due to which we were given the suit property for the purpose of residence. I am making this statement without any force, coercion and pressure. This is my true statement and I shall be bound by the same.

(GEETANJALI)
ADJ-3 (CENTRAL)
THC/DELHI/22.03.2021”

RO & AC

10. The order passed on 22nd March, 2021 records that Defendant No.2, along with her counsel, created a nuisance in Court and the counsel did not permit Defendant No.2 to even sign her statement, which was recorded on oath. The Trial Court has recorded serious observations against Defendant No.2 and her counsel to the following effect:

“Defendant no. 2 is examined under Order X CPC and when she was asked to sign the same, her counsel interfered in between and asked without permission of the Court whether she wishes to sign the same or not due to which only defendant no. 2 refused to sign the same and further while examining defendant no. 2, her counsel continuously kept on interfering in the same and was not restraining himself despite repeated warnings.”

11. From the statement recorded of Defendant No.2 and the above order passed by the Trial Court, it is clear that the Defendants have not merely failed to file the written statement but have also sought to renege from the statement on oath under Order X CPC. Such conduct of Defendant No.2

does not deserve any indulgence of this Court. The Defendants' application under Order IX Rule 7 CPC has also been perused by this Court. The same does not show any grounds whatsoever, except blaming the counsel for the Defendants. The impugned order dated 22nd March, 2021, which is under challenge, reads as under:

“At 12. 30 p.m.

Present: Plaintiff/PW-1 in person with ld.

Counsel Shri Vinayak Kamra and Shri Bhuvneshwar Tyagi.

D-2 in person with ld. Counsel Shri Zainulabideen, on behalf of D-1 as well.

An application under Order IX Rule 7 CPC read with Order VIII Rule 1 and 10 CPC has been moved on behalf of the defendants for setting aside ex-parte order dated 19.01.2021 and seeking permission to file written statement. Copy supplied. The application is strongly opposed by ld. Counsel for plaintiff on the ground that defendants were appeared before the Court on 19.12.2020 and they were proceeded ex-parte vide order dated 19.01.2021 and further no written statement has been filed till date and requests for dismissal of the same.

The application is dismissed due to the aforesaid conduct of defendant no.2.

Accordingly PW-1 examined-in-chief, however, her cross examination is deferred at the request of ld. Counsel for defendants. Put up for cross-examination of PW-1 on 23.04.2021. ”

12. A perusal of the above order shows that the Trial Court has considered the pleas raised in the application under Order IX Rule 7 CPC and recorded that Defendant No.2 does not deserve any indulgence. The application has, accordingly, been dismissed.

13. Considering the statement made by Defendant No.2, it is clear that Defendant No.2 admits that she and her husband are in possession of the suit property. The Plaintiff's case is that the husband of Defendant No.2, used to work with the husband of the Plaintiff and was, therefore, permitted to reside in the suit property. The manner in which Defendant No. 2 has sought to withdraw her statement and refused to sign the same and thereafter, the fact that there is considerable delay in filing of the present petition after the Defendants' right to file the written statement was closed, this Court is not inclined to give any further indulgence to the Defendants/Petitioners. It also clearly appears to this Court that the application under Order 12 Rule 6 is now likely to be taken for hearing and hence at this stage the Petitioners have approached this Court to thwart the further proceedings in the suit.

14. Accordingly, the present petition is dismissed with costs of Rs.10,000/-. The costs shall be paid on or before 18th August, 2021 i.e., the next date of hearing before the Trial Court. If the costs are paid, the Defendants/Petitioners would be permitted to cross-examine the Plaintiff's/Respondent's witness, if the need so arises. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

AUGUST 5, 2021/dk/T