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

% Judgment delivered on: 27.03.2023

+ CM(M) 500/2023

YASHWANT SAHU & ANR.

..... Petitioners

versus

ASHOK KUMAR & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Sanjiv Bahl, Adv.

For the Respondent : None

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 15009/2023 (Exemption)

1. Exemption is allowed, subject to all just exceptions.
2. Application stands disposed of.

CM(M) 500/2023 & CM APPL. 15008/2023 (Stay)

3. The petitioners challenge the order dated 15.09.2021 passed in RCT No. 15/2020 titled '*Yashwant Sahu & Anr. Vs. Ashok Kumar & Anr.*' whereby in an appeal under Section 38 of the Delhi Rent Control Act, 1958, the appeal of the petitioners/appellants seeking the right to lead evidence on the application under Order IX Rule 13 CPC, 1908 was closed on the grounds of violation of mandate under Section 35B CPC,

1908.

4. Mr. Sanjiv Bahl, learned counsel appearing for the petitioner draws attention of this Court to page 131 of the paper book containing the order dated 09.11.2022 in RCT No.22/2019 which is an appeal filed by the petitioners/appellants on the dismissal of the application under Order IX Rule 13 CPC, 1908 on merits.

5. Mr. Bahl learned counsel submits that as per his understanding of the order dated 09.11.2022, the learned First Appellate Court appears to have come to the conclusion that having not challenged the impugned order till date, the First Appellate Court need not be detained to hear lengthy arguments on the dismissal of application under Order IX Rule 13 CPC, 1908.

6. According to Mr. Bahl, the law in that regard is very clear, in that, every appeal has to be heard in its own merits and unless there is an intervening circumstance which would impact the pending appeal, the 2nd appeal has to be heard on its own merits, without being influenced by the earlier determination.

7. On that basis, Mr. Bahl submits that there may be an infraction of law based on the order dated 09.11.2022 placed at page 131 of the present petition.

8. This Court has considered the submissions made by learned counsel as also perused the impugned order dated 15.09.2021, and the order dated 09.11.2022 passed in appeal bearing RCT No.22/2019.

9. There is no dispute that the impugned order dated 15.09.2021 was never challenged by the petitioners/appellants till date and it appears that the petitioners/appellants were unaffected by the consequence of the

impugned order till date. It also appears from the submissions as also from the order dated 09.11.2022, that during the arguments in the other appeal bearing RCT No.22/2019, the petitioners/appellants felt that there may be an impact of the impugned order upon the hearing of the appeal bearing RCT No.22/2019.

10. There is no doubt that all appeals have to be heard on their own merits. However, having said that, this Court, having circumscribed jurisdiction under Article 227 of the Constitution of India, cannot really comment upon the impact or effect of the impugned order on the pending appeal bearing RCT No.22/2019, being based on merits. Apparently, there is no infraction of any procedural law or judicial impropriety.

11. In case the petitioners/appellants were having any apprehension, of the sort submitted above, the impugned order ought to have been challenged well in time.

12. On the aspect of delay and latches, the submission of Mr. Bahl that the delay could be condoned due to the pandemic period, is recorded to be rejected. Even if the entire period of delay on account of COVID-19 pandemic and the judgment of Hon'ble Supreme Court in **Suo Moto Writ Petition (C) No.3/2020 'In Re: Cognizance for Extension of Limitation'** is considered, it would, at best cover his case, uptill the month of June, 2022. Whereafter, the indulgence shown by the Hon'ble Supreme Court in the judgment of **Suo Moto** (supra) cannot come to the rescue of the petitioners/appellants.

13. Not only are the petitioners guilty of delay and latches in challenging the impugned order, it is also admitted by Mr. Bhal that

neither the cost of Rs.3,000/- nor cost of Rs.1,000/-, which was originally imposed has been paid till date.

14. Even on merits, the impugned order is absolutely sustainable in law since the same is based not only on the mandate of Section 35B CPC, 1908 as also based clearly on the judgment of Hon'ble Supreme Court in *Manohar Singh Vs. D. S. Sharma and Another* reported in (2010) 1 SCC 53. As such, the impugned order is even otherwise, on merits, not questionable.

15. On a query put by this Court in respect of the payment of cost imposed while dismissing the appeal 15/2020 wherefrom the impugned order arises is concerned, Mr. Bahl very fairly submits the said cost has also not been paid till date.

16. Having regard to the fact that the petitioners had neither paid the original costs as imposed vide the impugned order dated 15.11.2021, nor the original costs (Rs.3,000/- and Rs.1,000/-) which were questioned in the appeal number RCT No. 15/2020, this Court is of the considered opinion that there is no merit in the present petition and the same is dismissed without any order as to costs.

17. Learned First Appellate Court is at liberty to proceed with the other appeal in accordance with law.

TUSHAR RAO GEDELA, J .

MARCH 27, 2023/ms