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

Date of decision: 09.10.2023

+ CM(M) 1057/2023 & CM APPL. 34432/2023

MOHAN KUKREJA (SINCE DECEASED) THROUGH LRS

..... Petitioner

Through: Mr. Diggaj Pathak and Ms. Shweta
Sharma, Advocates

versus

CHARANJEET SINGH & ANR.

..... Respondents

Through: Mr. Kuldeep Mansukham, Advocate

+ CM(M) 1060/2023 & CM APPL. 34448/2023

MOHAN KUKREJA (SINCE DECEASED) THR LRS.

..... Petitioner

Through: Mr. Diggaj Pathak and Ms. Shweta
Sharma, Advocates

versus

SIMARPREET SINGH

..... Respondent

Through: Mr. Kuldeep Mansukham, Advocate

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. These petitions filed under Article 227 of the Constitution of India impugn the common order dated 23.02.2023 passed by the Civil Judge, Saket Court, Delhi ('Trial Court') in CS SCJ 876/2019 titled as "**Chanranjeet Singh v. Mohan Kukreja**" and in CS SCJ 130/2016 titled as



“**Simarpreet Singh v. Mohan Kukreja**” whereby, the Trial Court allowed the application filed by the Respondent(s) under Order XXII of Code of Civil Procedure, 1908 (‘CPC’) and an application under Section 5 of the Limitation Act, 1963 read with Section 151 CPC (‘said applications’).

1.1. The Trial Court while exercising its discretion in condoning the delay, allowed the said application filed under Section 5 of the Limitation Act and imposed the costs of Rs. 5,000/- on the Respondent(s) to be paid to the Petitioner herein.

2. At the outset, the learned counsel for the Respondent(s) states that the said costs was tendered on 20.04.2023 and duly received by the Petitioner herein. He states that in view of the receipt of the said costs, the present petition is not maintainable as the order has been accepted by the Petitioner.

2.1. A perusal of the petition shows that there is no disclosure in this petition with respect to the receipt of the payment of the costs.

3. In reply, the counsel for the Petitioner concedes that the cost has been received. He however argues that despite receiving the said cost Petitioner will entitle to maintain this petition.

3.1. The learned counsel for the Petitioner has failed to explain the circumstances in which this material fact was withheld.

4. This Court has considered the submissions of the parties and perused the paper book.

5. In the opinion of this Court, this petition could not have been filed by the Petitioner after having accepted the costs paid by the Respondent(s) and further, the Petitioner was obliged to have disclosed this material fact in the present petition. In this regard it would be instructive to refer to the judgement of the Coordinate Bench of this Court in **Vikramaditya Bhartia**



v. DDA, 2011 SCC OnLine Del 3761 which reads as under:

“1. The petition impugns the demand, contained in the letter dated 1 October, 2010, of Rs. 13,00,286/- of the respondent DDA on the petitioner, on account of misuse charges and as a pre-condition for conversion of the leasehold rights in land underneath property no. A-94, Okhla Industrial Area, Phase-II, New Delhi into freehold. The petitioner claims to have paid the said amount to the respondent DDA under protest and seeks a mandamus to the respondent DDA to refund the said amount to the petitioner along with interest @6% per annum.

2. It has at the outset been enquired from the senior counsel for the petitioner as to how, the challenge to the demand can be entertained at this stage when the petitioner has already complied with the demand and on the basis of the said compliance made the respondent DDA convert the leasehold rights in the land into freehold. It has been enquired, whether the petitioner after having made the respondent DDA alter its position, is entitled to challenge the demand; challenge if any desired by the petitioner to the said demand ought to have been made before complying with the said demand and if the petitioner during the said challenge was desirous of having the leasehold rights converted into freehold, could have obtained the permission from the Court for making the payment without prejudice to his rights and contentions and subject to the final outcome of the petition. The Court could have then considered whether the respondent DDA could be directed to so change its position. However the petitioner having unequivocally led the respondent DDA into believing that the petitioner was agreeable to the said demand, it appears, cannot now be heard to challenge the same.

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4. The petitioner has preferred this remedy of equity jurisdiction of this Court. This Court in exercise of equity jurisdiction would balance equity qua both the parties and not qua the petitioner alone. The petitioner having not shown to have notified the respondent DDA of its objection if any to the demand of Rs. 13,00,286/-, the respondent DDA cannot be said to have agreed to convert the leasehold rights into freehold with knowledge of the said protest of the petitioner or with knowledge of the pending claim of the petitioner for refund of the said amount. The respondent DDA has irreversibly changed its position and it will be inequitable to, in exercise of writ jurisdiction, direct the respondent DDA to refund the said amount.

5. Lord Atkin in the House of Lords in United Australia Ltd. v. Barclays Bank Ltd. (1940) 4 ALL. E.R. 20 held that if a man is entitled to one of the two inconsistent rights, it is fitting that when with full knowledge he has done an unequivocal act showing that he has chosen the one, he cannot afterwards pursue the other, which after the first choice is by reason of the



inconsistency no longer his to choose. The said principle has also been applied by the Courts in dealing with challenges to orders of the Court after acceptance of costs. It has been held that acceptance of costs amounts to acceptance of the order as correct and having taken benefit of one part of the order, a party cannot turn around and say that he will also challenge the order. It has been held that by allowing the party to challenge the order amounts to nullifying the acceptance of costs; a litigant cannot approbate and reprobate; he had two options, either to accept the costs and treat the order as correct or not to accept the costs and to challenge the order; having elected to accept the costs, he is estopped from thereafter challenging the order.”

(Emphasis Supplied)

6. The present petitions are therefore not maintainable and deserve to be dismissed on this ground alone.
7. This Court further notes that as per the additional affidavit filed by the Petitioner on 18.08.2023, the Petitioner admits that the suit abated on 30.05.2022 and the application of the Respondent(s) was filed on 04.07.2022. The exercise of discretion by the Trial Court in condoning the delay lies within its jurisdiction and the facts of this case do not merit any interference.
8. In the opinion of this Court, the condonation of delay in filling the application under Order XXII of CPC as allowed by the Trial Court does not merit any interference and for this ground, in addition, the petition is not maintainable in this case.
9. Accordingly, the present petitions along with pending applications are dismissed.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 09, 2023/rhc/asb

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