



\$~61

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

Date of decision: 12.09.2023

+ CM(M) 1464/2023 & CM APPL. 46708/2023

ARJUN AGGARWAL & ORS. Petitioners

Through: Mr. R.K. Sharma, Advocate

versus

GOVIND RAM AGGARWAL & ANR. Respondents

Through: Mr. Vikas Manchanda, Advocate for
R-1

%

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 46707/2023 (For Exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1464/2023 & CM APPL. 46708/2023

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 15.07.2023 passed by Civil Judge, North, Rohini Court, Delhi ('Trial Court'), in CS SCJ 535040/2016, titled as **Govind Ram Aggarwal v. Arjun Aggarwal & Ors.**, dismissing the application filed by the Petitioners under Order XLVII Rule 1 read with section 151 of the Code of Civil Procedure, 1908 ('CPC') seeking review of the order dated 24.05.2023.

1.1. The Petitioner Nos. 1 and 2 are the defendant nos. 1 and 2 and the



Respondent No.1 is the plaintiff in the suit.

1.2. Petitioners Nos. 3 to 7 are remaining defendants in the suit.

1.3. The application under Order VII Rule 10 and 11 CPC was filed by defendant Nos. 1 and 2; therefore, reference for the sake of convenience Petitioner Nos. 1 and 2 herein are being referred to as Petitioners in this judgement.

1.4. The civil suit has been filed for recovery of possession of the suit property, ejectment, mesne profits as well as permanent and mandatory injunction. The Trial Court *vide* order dated 24.05.2023 framed issues and listed the matter for recording plaintiffs' evidence on 07.06.2023.

Rival contention of the parties

2. Mr. R.K. Sharma, the learned counsel for the Petitioners states that the Petitioners are aggrieved in as much as the applications dated 02.06.2015 filed by the Petitioners under Order VII Rule 10 and 11 CPC has not been disposed of till date and therefore, the trial cannot be proceeded with without first disposing of the said applications.

2.1. He further states that once an application is filed under Order VII Rule 11 CPC, the Court is obliged to dispose of the same before proceeding with the trial. He relies upon the judgement of the Supreme Court in ***R.K. Roja v. U.S. Rayudu and Another; (2016) 14 SCC 275.***

3. Mr. Vikas Manchanda, the learned counsel for the Respondent No.1, who appears on advance notice states that the present petition is a gross abuse of the process of law.

3.1. He states that though the suit was instituted on 30.05.2012 and the written statement was filed by the Petitioners herein on 11.07.2012, the Petitioners have not permitted the suit to proceed to trial despite passage of eleven (11) years, by seeking adjournment and filing applications on one or



the other pretext.

3.2. He has placed before this Court a copy of the order sheets of the Trial Court between June, 2012 until 20.07.2023 to contend that a perusal of the order sheets would show that the Petitioners after filing their applications under Order VII Rule 10 and 11 CPC have not pressed the said applications for hearing at any stage. He has also filed list of dates with respect to the proceedings held before the Trial Court.

3.3. He states that the Trial Court *vide* order dated 24.05.2023 framed the issues in the presence of the counsel for all the parties including the Petitioners herein and at that stage as well, the Petitioners did not press the hearing of their applications filed under Order VII Rule 10 and 11 CPC.

3.4. He states that even otherwise, the Trial Court has already framed issues being cognizant of the averments raised in the applications filed by the Petitioners under Order VII Rule 10 and 11 CPC and the rights of the Petitioners have been reserved to that effect.

3.5. He states that Respondent No. 1, who has to appear as a plaintiff witness is terminally ill as noted in the order dated 26.05.2023 and the effort of the Petitioner is to delay the proceedings so as to ensure that the Respondent No. 1 is unable to step into the witness box and depose. The submission of learned counsel for Respondent No. 1 as regards illness of the Respondent No.1 as filed in this regard reads as under:-

- "1. The respondent No. 1 is aged 69 years and is suffering from Muscular dystrophy having more than 83% permanent disability. Muscular dystrophy (MD) refers to a group of genetic diseases that cause progressive weakness and degeneration of skeletal muscles. The certificate no. 1191 dated 15.06.17 has been issued by MS Babu Jagjivan Ram Memorial Hospital, Jahangir Puri, Delhi.*
- 2. That the respondent No. 1 is neither in a position to sit nor stand or lie down by himself or to carry out daily activities without help.*
- 3. That the medical condition of the Respondent No. 1 is deteriorating day*



by day and has diet has come down to less than 1 chapati a day. The food pipe and breathing nerves of the Respondent No. 1 are shrinking due to the disease making the life span of Respondent No. 1 is uncertain.”

4. In response, learned counsel for the Petitioners states that the Petitioners as well are senior citizens and it is therefore, in the interest of justice that the matter is decided expeditiously.

Analysis and findings

5. This Court has heard the learned counsel for the parties and perused the record.

6. This Court has also perused the tabulated list of dates and proceedings held before the Trial Court as handed over by the learned counsel for the Respondent No. 1.

7. A perusal of the tabulated list shows that though the suit was instituted on 30.05.2012, the written statement was filed by the Petitioners on 11.07.2012.

7.1. However, the applications under Order VII Rule 10 and 11 CPC were filed by the Petitioners only on 04.06.2015 (after more than three (3) years of the filing of the suit). The reply to the said application was filed by the Respondent No. 1 on 07.12.2015. Thus, pleadings in these applications stood completed as on 07.12.2015.

7.2. The matter was thereafter adjourned before the Trial Court from time to time at the request of either party and in fact, led to the Trial Court imposing cost on parties for delaying the proceedings inter-alia vide orders dated 23.02.2018, 24.09.2018 and 10.01.2023.

7.3. On 08.09.2021 six (6) years after the application was first filed by the Petitioners, the Trial Court noted in its order that the application under Order VII Rule 11 CPC is pending and directed that no further adjournment will be



granted in the matter. However, as is apparent from the record, no arguments were addressed on the said application by the Petitioner on the following dates.

7.4. Thereafter, (about one (1) year later) on 05.07.2022, the Trial Court once again recorded that the Petitioner had sought an adjournment to address arguments on his applications under Order VII Rule 10 and 11 CPC. However, the said applications were not argued by the Petitioners even thereafter and adjournment was sought on the following date i.e., 24.08.2022.

7.5. In fact, the matter was thereafter listed before the Trial Court on 30.11.2022, 10.01.2023, 24.01.2023 and 06.02.2023; however, the counsel for the Petitioners did not address arguments on these applications and instead on 06.02.2023 pressed for hearing on their application under Order VI Rule 17 CPC for amendment of their written statement, which was allowed by the Trial Court. Thus, the applications filed by the Petitioners under Order VII Rule 10 and 11 CPC continued to remain pending as it was not pressed by the Petitioners.

8. Thus, as is evident from the facts noted hereinabove, the Petitioners having filed the application filed under Order VII Rule 11 CPC on 04.06.2015 did not address arguments in the said application for **eight (8) years** despite the Trial Court granting repeated opportunities.

9. In these circumstances on 24.05.2023, the Trial Court proceeded to frame issues with the consent of the parties and in presence of the counsel for the parties. Pertinently, the objections raised by the Petitioners in the applications filed under Order VII Rule 10 and 11 CPC stood incorporated as specific issue was framed on the said objections. The matter was thereafter set down for recording of plaintiff evidence on 07.06.2023.



9.1. It was at this belated stage on 03.06.2023 (i.e., **11 years** after the suit had been filed), the Petitioners filed an application under Order XLVII Rule 1 CPC seeking review/recall of the order dated 24.05.2023.

9.2. By way of this review application, the Petitioners sought recall of the order framing the issues and sought prioritised hearing of their applications under Order VII Rule 10 and 11 CPC. There was no plea raised in this application that the issues have been framed incorrectly. In effect, the Petitioners sought a stay on the recording of the plaintiff evidence.

9.3. However, on 15.07.2023 i.e., the date of the impugned order, the Trial Court firstly allowed another application under Order VI Rule 17 filed by legal representatives of deceased defendant no. 5; permitted the amended written statement to be taken on record and framed an additional issue arising out of the said amendment.

9.4. The final issues framed on the said date by the Trial Court were as under:-

- I) Whether the suit of the plaintiff is maintainable in its current form? OPP.
- II) Whether the suit of the plaintiff is barred by Limitation? OPD.
- III) Whether the Plaintiff is entitled to the decree of possession in his favour and against the Defendants qua the suit property as prayed for? OPP.
- IV) Whether the plaintiff is entitled for decree of permanent injunction, as prayed for? OPP.
- V) Whether the plaintiff is entitled for decree of mandatory injunction, as prayed for? OPP.
- VI) Whether the plaintiff is entitled to pendente lite and future



damages @25,000/- per month as prayed for? OPP.

VII) Relief.

9.5. Pertinently, no objection was raised by the Petitioners to the framing of the additional issue.

10. The Trial Court has noted in its impugned order that it was at that stage (after the amended written statement was taken on record) and after the framing of the additional issue was concluded that the Petitioners (belatedly) pressed its review application filed under Order XLVII Rule 1 CPC.

10.1. The Trial Court has specifically recorded in the impugned order that the applications under Order VII Rule 10 and 11 CPC were not pressed by the Petitioners, despite opportunity and more specifically when the matter was called out on 24.05.2023 and issues got framed. The relevant portion of the impugned order dated 15.07.2023 reads as under:

“At this stage, Ld. Counsel for the Defendant-1 has pressed his application u/O XLVII CPC seeking review of order dated 24.05.2023. By way of the present application, the Ld. Counsel for the defendant-1 has sought for the review of the aforesaid order to the extent that Application u/O VII R 11 CPC and Application u/O VII R 10 CPC ought to be taken first for the purpose of determination. In respect of his contentions, Ld. Counsel for the defendant has relied upon decision of Hon’ble Apex Court in RK Roja Vs. UC Rayadu. Submissions heard.

A perusal of the case file shows that the Application u/O VII R 10 CPC and Application u/O VII R 11 CPC was filed on 14.06.2015 and despite opportunity, after the disposal of the application u/O VI R 17 CPC, the same was not pressed by the Defendants when the case was called out on the pre-fixed date of 24.05.2023.

Hence, effectively that application had not been prosecuted on the said date and in the absence of the said application being pressed/prosecuted, the suit proceeded in the usual course and issues were framed.

Hence, in the absence of there being any error apparent on the face of the record, no case is made out for reviewing order dated 24.05.2023.”

(Emphasis supplied)

11. In the opinion of this Court, the said findings of the Trial Court that the Petitioners herein have not pressed the applications under Order VII Rule



10 and 11 CPC despite opportunities is duly borne out from the proceedings as noted hereinabove. The learned counsel for the Petitioners was unable to explain the inaction of the Petitioners in addressing arguments on the said applications for eight (8) years during the course of arguments.

12. In these circumstances, the Trial Court rightly proceeded to frame the issues on 24.05.2023 and 15.07.2023.

13. In the facts of this case, the record before this Court evidences that the Petitioners itself has not been prosecuting the applications filed under Order VII Rule 10 and 11 CPC and has started pressing the said application in 2023 (i.e., eight (8) years after its filing), only when the matter was set down for recording of plaintiff evidence. In the facts of this case, it is evident and apparent on the face of the record that the Petitioners herein is not permitting the trial of the suit to proceed.

13.1. The delay tactic is further evident from the fact that present petition impugning the order dated 15.07.2023 and in effect, 24.05.2023, has been first listed before this Court today on 12.09.2023 after a delay of more than four (4) months.

14. In the opinion of this Court, as noted above, no prejudice has been caused to the Petitioners due to the non-adjudication of the applications filed under Order VII Rule 10 and 11 CPC, as on the basis of the objections raised by the Petitioners in the said applications, issues incorporating the said objections raised were framed by the Trial Court on 24.05.2023 and amended on 15.07.2023. There is no dispute before this Court that the issues framed duly record the issues arising between the parties and therefore, all objections which were raised by the Petitioner have been duly taken care of in the issues framed. In this regard, this Court deems it apposite to refer to the judgement



of the Supreme Court in ***Madhusri Konar and Another vs. New Central Book Agency Private Limited and Others; (2016) 14 SCC 14***, more specifically, para '2' which reads as under:

*2. The High Court has taken note of the fact that a similar attempt made by the appellants before this Court has already been declined. Therefore, at this stage, despite the persuasive submissions on the part of the learned counsel base on the decision of this Court in R.K. Roja v. U.S. Rayudu that application filed under Order 7 Rule 11 CPC has to be disposed of before the Trial Court, we are not inclined to interfere in the peculiar facts of this case. Be that as it may, it is seen from the issues, which have been framed by the High Court, that the maintainability as well as the cause of action are sperate issues on which the trial court has to proceed. **Now that all the objections raised by the appellants in the application filed under Order 7 Rule 11 CPC are covered by the issues already framed, it is not necessary to frame any additional issue.** The application under Order 7 Rule 11 CPC will stand rejected.*

(Emphasis supplied)

This Court similarly, holds that in the peculiar facts of this case, this Court is not willing to exercise its jurisdiction under Article 227 of the Constitution to interfere with the impugned order of the Trial Court.

15. In the judgement of ***R.K. Roja (supra)*** on which the reliance has been placed, the election petition therein had been instituted on 30.06.2014, objections was taken by defendant therein on the first date and the affidavit was filed immediately i.e., within thirty (30) days from the receipt of the summons praying that the petition be dismissed, unlike in the present case where the applications under Order VII Rule 10 and 11 CPC has been filed almost after three (3) years of the filing of the suit in June, 2012 and not prosecuted for eight (8) years thereafter.

16. The issues have been framed in the suit, the defences of the Petitioners framed as issues will be duly tested at trial, however, a perusal of the order sheet shows that the matter though instituted in 2012 has not proceeded to trial in almost eleven (11) years. The Petitioners as well admit that the parties



are senior citizens and therefore it is in the interest of the parties that the matter is heard and decided expeditiously.

17. This Court therefore, finds no error in the order dated 24.05.2023 and the order dated 15.07.2023 passed by the Trial Court.

Misconduct of the Petitioners

18. This Court is however, constrained to take note of the conduct of the Petitioners which had followed since 24.05.2023, which amounts to abuse of process of law.

19. The Trial Court by the impugned order dated 15.07.2023 after dismissing the Petitioner's application seeking review of the order dated 24.05.2023, posted the matter for recording of plaintiff evidence on 20.07.2023.

19.1. However, on 20.07.2023, when the matter was listed before the Trial Court, for recording of plaintiffs' evidence, the Petitioner opposed the recording of the evidence, sought an adjournment and opposed the hearing of the matter by the said Judge on the ground that the Petitioner has filed an application against the Presiding Officer before the administrative authorities. The relevant portion of the order dated 20.07.2022 reads as under:-

"At this stage, it is submitted by Ld. Counsel for the defendants that the Defendants have filed an application containing their grievances before the appropriate authorities (Hon'ble R.G., Vigilance, Hon'ble High Court of Delhi) and he has accordingly requested that the matter be transferred, or in the alternative, he intends to file an application for transfer before the Ld. PDJ, North, Rohini.

Be that as it may, suffice it to say that the parties are always at liberty to file appropriate applications for transfer, if so desired by them. Moreover, since no cogent reason has been furnished for the undersigned to refer the case to the Ld. PDJ, North, Delhi for request to transfer the present suit, the matter will proceed in the usual course.

Matter is listed for PE. Evidence affidavit of PW Govind Ram Agarwal filed. Copy of the same has been supplied to the opposite side.

Today, the Ld. Counsel for the defendants except D-5(1) AND Ld. Counsel for the plaintiff states that he has supplied the copy of the same,



electronically, to the Ld. Counsel for the defendant-5(1). However, Ld. Counsel for the plaintiff seeks an adjournment to lead PE on the ground of non-availability of the witness as he is suffering from 83% disability and muscle dystrophy. Taking a lenient view, the same is allowed.

Be taken up for PE on 19.08.2023 at 2 PM.

Date is given at the joint convenience of both the parties.

Shorter date is given as the plaintiff is a senior citizen and the matter is one of the twenty oldest cases of this Court."

(Emphasis supplied)

19.2. The Trial Court after taking note of the submissions of the Petitioners, however, adjourned the matter for plaintiffs' evidence at the request of the Respondent No.1 for 19.08.2023.

19.3. This Court has been informed that the Petitioners herein have filed a transfer petition before the concerned District Judge, North, Rohini Courts, Delhi and the said petition is next listed on 14.09.2023.

20. In the opinion of this Court, the ground on which the adjournment was sought on 20.07.2023 was an unfair tactic employed by the Petitioner. Admittedly, no allegation was levelled against the presiding officer during the earlier hearings when the applications of the Petitioners and other co-defendants was allowed by the Trial Court on 06.02.2023 and 15.07.2023. The Presiding Officer had heard this matter on several dates i.e., 30.11.2022, 10.01.2023, 24.01.2023, 06.02.2023, 24.05.2023 and 15.07.2023. It is therefore apparent that it is only when the Petitioners herein were unsuccessful in scuttling the trial at the hearing dated 15.07.2023 that allegations have been levelled against the Presiding Officer. This Court deprecates the conduct of the Petitioners in seeking to browbeat the Trial Court.

21. Admittedly, the transfer petition was filed subsequent to the hearing dated 20.07.2023 and therefore, tactic employed for seeking an adjournment on 20.07.2023 is unfair and unwarranted. It is apparent that the Petitioners



were seeking to scandalize the Trial Court.

22. This Court therefore finds no merit in this petition and the same is dismissed with cost of Rs 25,000/- and in case, the costs are not paid, the Trial Court is directed to strike of the defence of the Petitioners.

23. Pending application stands disposed of.

MANMEET PRITAM SINGH ARORA, J
SEPTEMBER 12, 2023/hp/sk