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

Date of decision: 16.10.2023

+ CM(M) 1652/2023 & CM APPLs. 52477/2023, 52478/2023, 52479/2023

SUSHIL KUMAR JAIN & ANR.

..... Petitioner

Through: Mr. Randhir Jain and Mr. Bhoop Singh, Advocates

versus

KAYMES CO-OPERATIVE GROUP HOUSING SOCIETY LTD & ORS.

..... Respondent

Through: None

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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):

CM APPLs. 52478/2023, 52479/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present applications stand disposed of.

CM(M) 1652/2023 & CM APPL. 52477/2023

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 19.09.2023 passed by Additional Senior Civil Judge, Karkardooma Courts, Delhi ('Trial Court') in CS No. 195/2023 titled as **Sushil Kumar Jain v. Kaymes Cooperative Group Housing Society Ltd.**



1.1. The Trial Court vide the impugned order dated 19.09.2023, recorded filing of the plaintiff's application under Order 8 Rule 10 of the Code of Civil Procedure, 1908 ('CPC'). The said Court further observed that the defendants have filed an application under Order 7 Rule 11 of CPC on 13.07.2023 and directed the defendants to supply a copy of the said application to the plaintiffs; and thereafter listed the matter for consideration of both the applications on 04.12.2023.

2. None appears on behalf of the Respondent despite advance service.

3. The Petitioners herein are plaintiffs and the Respondents herein are the defendants before the Trial Court.

3.1. The suit bearing no. 195/2023 was filed by the plaintiffs on 28.02.2023, seeking the direction to the defendants to render true and faithful account of the dues raised against the plaintiffs with respect to the property bearing no. flat no. 78 Geeta Apartments, Geeta Colony, Delhi ('subject property'). The plaintiffs further sought a decree of permanent injunction against the defendants from interfering in the peaceful use of the subject property.

3.2. The Trial Court issued the summons to the defendants in the matter on 10.03.2023. All the defendants were served with summons of the suit and notice of interim application on 23.03.2023. No written statement was filed in the said matter by the defendants, and the statutory period of 30 days to file the same expired on 23.03.2023.

3.3. The plaintiffs thereafter filed an application under Order 8 Rule 10 of the CPC on 24.04.2023.

4. The learned counsel for the plaintiffs states that the plaintiffs are aggrieved by the deliberate inaction of the defendants in not filing its written



statement in the suit.

3.1 He states that the Petitioners herein have filed an application under Order 8 Rule 10 of the CPC seeking a judgment against the Respondents for failing to file their written statement.

3.2 He states the Trial Court vide order dated 19.09.2023 while recording the filing of the application under Order 8 Rule 10 CPC has erroneously recorded that an application under Order 7 Rule 11 CPC was filed by the defendants on 13.07.2023. He has drawn this Court's attention to the order dated 13.07.2023 and submits that there is no mention of the filing of the application under Order 7 Rule 11 CPC in the said order.

3.3 He states that, therefore, in these circumstances, the Petitioners herein had no notice of filing of any application under Order 7 Rule 11 CPC by the Respondents herein on 13.07.2023.

3.4 He states that thereafter, the Court on 19.09.2023, further directed the defendants to serve a copy of the application under Order 7 Rule 11 CPC to the plaintiffs within ten (10) working days.

3.5 He states on instructions that however, till date no copy of the application has been served on the plaintiffs in furtherance of the order dated 19.09.2023. He states that in these circumstances, it has become evident that defendants are only interested in delaying the proceedings.

3.6 He, further, states that in any event filing of application under Order 7 Rule 11 CPC does not justify the non-filing of the written statement and therefore, the Trial Court should have proceeded to adjudicate upon the application under Order 8 Rule 10 CPC.

5. This Court has considered the submissions of the Petitioners herein and also perused the additional affidavit filed by the Petitioners herein on



13.10.2023.

6. At this stage, this Court is of the opinion that this petition can be disposed of with a request to the learned Trial Court to hear and adjudicate upon the application of the plaintiffs filed under Order 8 Rule 10 CPC within one (1) week from 04.12.2023, the date already fixed before the Trial Court, considering the fact that the defendants have elected not to file their written statement within the statutory period of 30 days and have not served a copy of their application under Order 7 Rule 11 CPC to the plaintiffs till date in violation of the order dated 19.09.2023.

7. With the aforesaid directions, the present petition is disposed of. Pending application stands disposed of.

OCTOBER 16, 2023/msh/sk

MANMEET PRITAM SINGH ARORA, J

Click here to check corrigendum, if any