



2023:DHC:7651



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 18.10.2023

+ CM(M) 1693/2023 & CM APPL. 53703/2023

SH. R.K. KOHLI

..... Petitioner

Through: Mr.Sumit Gaur, Mr.Tanishq
Sharma, Mr.Mohit Sharma and
Mr.Nikesh Rathi, Advs.
Mr.Amit Sanduja and Mr.H.S.
Kohli, Advs.

versus

SH. VIPIN KOHLI & ANR.

..... Respondents

Through: Mr. Abhimanyu Kumar, Adv.
for R-1 (through VC)

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed challenging the order dated 31.10.2022 (hereinafter referred to as 'Impugned Order'), passed by the learned Civil Judge, North-West, Rohini Courts, Delhi in C.S. No.461/2020, titled as ***Sh.R.K. Kohli v. Sh.Vipin Kohli & Anr.***, dismissing the application filed under Order XII Rule 6 of the Code of Civil Procedure, 1908 (in short, 'CPC') by the petitioner herein, who is the plaintiff in the said suit, while at the same time, by a separate order, holding that the said



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court does not have the jurisdiction to adjudicate the Suit, and transferring the same to the learned Family Court.

2. The learned counsel for the petitioner submits that once the learned Civil Judge had come to the conclusion that it does not have the requisite jurisdiction to adjudicate the Suit, it should have restrained itself from deciding on the petitioner's application filed under Order XII Rule 6 of the CPC. He submits that Impugned Order, therefore, has been passed without jurisdiction and is liable to be set aside.

3. On the other hand, the learned counsel for the respondent, who appears on advance notice, submits that the Impugned Order was passed on 31.10.2022, and the present petition has been filed after almost one year of passing of the said order. He submits that in the meantime, the trial in the said Suit before learned Family Court had proceeded. He submits that the Suit is now listed for purposes of cross-examination of the petitioner.

4. I have considered the submissions made.

5. Though, the learned counsel for the petitioner rightly submits that for a petition under Article 227 of the Constitution of India, there is no period of limitation prescribed under the Limitation Act, 1963, but at the same time, the principle of the delay and laches would certainly be applicable. In the present case, the Impugned Order is dated 31.10.2022 and the present petition has been filed by the petitioner only on or around



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23.09.2023, that is, with a delay of about 1 year. There is no explanation for the delay in filing of the same. In the meantime, pursuant to the transfer of the suit, the learned Family Court has proceeded with the trial of the suit.

6. In my view, therefore, even though the petitioner has rightly submitted that the Impugned Order could not have been passed once the learned Court had come to the conclusion that it lacked jurisdiction to adjudicate the suit, at the same time, on account of the unexplained delay, I do not deem it appropriate to interfere with the said order.

7. It is made clear that any and all of the observations made by the learned Civil Court in the Impugned Order shall not, in any manner, influence the learned Family Court in adjudicating the Suit filed by the petitioner pending adjudication before it.

8. The petition and the application are disposed of in the above terms.

NAVIN CHAWLA, J

OCTOBER 18, 2023/ns/am