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

Date of decision: 23.11.2023

+ **CM(M) 1932/2023, CM APPL. 60555/2023 & CM APPL. 60556/2023**

AMARJEET KAUR

..... Petitioner

Through: Ms. K. Vaijanthi, Adv.

versus

USHA GARG AND ANR

..... Respondents

Through: Mr. Shivam Garg, Adv for R-1.

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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. The present petition filed under Article 227 of the Constitution of India impugns the order(s) dated 30.04.2022 and 29.03.2023 passed by the ADJ, South East, Saket Court, New Delhi in CS No. 829 of 2018 titled as **Smt. Usha Garg v. Amarjeet Kaur & Anr** ('Trial Court').

1.1 The Trial Court vide impugned order dated 30.04.2022 dismissed the application filed under Order VIII Rule 1, Civil Procedure Code, 1908 ('CPC') and declined to take the written statement on record.

1.2 The Trial Court vide impugned order dated 29.03.2023 declined to recall the order dated 30.04.2022.

2. The Petitioner is the original defendant no. 1 and Respondent no. 1 is



the contesting plaintiff before the Trial Court.

2.1 The civil suit has been filed seeking a decree of possession with respect to the 1st and 2nd Floor of property RZ-265, Gali No. 19 (Old No. 8-31) Tughlakabad Extn., New Delhi ('subject property'), declaration declaring the sale deed dated 02.06.2017 is null and void, permanent injunction restraining the Petitioner from parting with the possession or creating third party interest in the said property and for recovery of damages as well.

3. This petition has been filed impugning the said order(s) dated 30.04.2022 and 29.03.2023 on 20.11.2023 and has been listed before this Court, for the first time today.

4. Learned Counsel for the Petitioner states that summons in the suit were received by the Petitioner i.e., defendant No.1 on 01.06.2018. She states that the written statement was filed in or around September, 2020.

4.1 She states that subsequently since there was the covid pandemic, the Petitioner herein lost track of the suit and was unaware about the fact that the Petitioner had been proceeded ex-parte by the Trial Court on 30.04.2022.

4.2 She states that, subsequently, the Petitioner herein engaged a new Counsel and filed an application under Order IX Rule 7 of CPC for setting aside the order of the Trial Court proceeding ex-parte on 30.04.2022; and for permitting the written statement to be taken on record.

4.3 She states that the Petitioner was prevented from filing her written statement within 120 days from service of summons due to her old age and illness.

5. In reply, learned Counsel for the Respondent no. 1 states that present petition is mala fide.



6.1. He states that the Petitioner has not disclosed in this petition that after passing of the impugned order dated 29.03.2023, the Respondent No. 1 has already led his evidence and examined his witness PW-1.

6.2. He states that the said witness have been extensively cross examined by Petitioner herein i.e., defendant No. 1 respectively on five (5) separate dates before the Trial Court.

6.3. He states that, in fact, evidence of the Respondent no. 1 i.e., the plaintiff stands concluded on 20.11.2023 and the matter has been now fixed for recording Defendant's evidence on 15.01.2024.

6.4. He states that, therefore, filing of this Petition belatedly on 20.11.2023 is nothing but an attempt to protract the trial pending before the Trial Court.

6.5. He states that the Petitioner is occupying the subject property without making payment of any rent/user charges. He, therefore, prays that the present petition deserves to be dismissed.

6. This Court has considered the submissions of the parties and perused the record.

7. The Petitioner was admittedly served with the summons on 01.06.2018. She, thereafter, initially delayed the filing of the written statement within the statutory period and filed the same after two (2) years in September, 2020 accompanied with an application under Order VIII Rule 1 CPC.

7.1. Thereafter, she failed to prosecute her application filed under Order VIII Rule 1 of CPC before the Trial Court for two (2) more years. It is a matter of record that neither the Petitioner nor her counsel participated in the trial from January, 2020.

7.2. In these circumstances, the Trial Court after perusing the record vide



1st impugned order dated 30.04.2022 dismissed the application filed under Order VIII Rule 1 of CPC on merits and proceeded ex-parte against the Petitioner herein.

7.3. The Petitioner, thereafter, sought to rejoin the proceedings by filing an application belatedly on 06.01.2023 seeking recall of the order dated 30.04.2022.

7.4. The Trial Court vide 2nd impugned order 29.03.2023 partly allowed the said application. The Trial Court recalled the order to the extent defendant no.1 was proceeded ex parte and rejected the prayer dismissing the application under Order VIII Rule 1 CPC.

8. This Court is of the view that if Petitioner was aggrieved by the said order(s), she should have approached this Court promptly. However, the Petitioner accepted the said order(s) and participated in the further proceedings in the civil suit.

8.1. As noted above, the evidence of the Respondent no. 1 i.e., the plaintiff was led subsequently and the Petitioner herein cross-examined the plaintiff's witness. The matter was listed before the Trial Court between 29.03.2023 and 20.10.2023 at least on five (5) separate dates.

8.2. The plaintiff examined his witness and the plaintiff evidence (PE) stands concluded on 20.11.2023; and it is, thereafter that the present petition has been filed by the Petitioner herein on 20.11.2023 seeking to challenge the order dated 30.04.2022 dismissing the application filed under Order VIII Rule 1 CPC.

9. The challenge to order dated 30.04.2022 dismissing the application filed under Order VIII Rule 1 CPC after 1½ years and after the PE has been concluded is not reasonable. The filing of the application dated 06.01.2023



for recall of the order dated 30.04.2022 does not justify the delay. Nevertheless, the said application for recall also stood dismissed by Trial Court on 29.03.2023; whereas the present petition has been filed in November, 2023 (8 months later).

10. Thus, in the facts of this case, it is evident to the Court that the delay in filing of this petition is not bonafide. The Petitioner who was served in 2018 has let the clock tick till 2023 (5 years). The Trial Court has held several hearings and conducted the trial. The Petitioner is abusing the process of law and is only seeking to delay the suit proceedings pending before the Trial Court by filing the present petition. The suit was filed in the year 2018 and the Petitioner by filing the present petition is seeking to set the clock back to the stage of the filing of the written statement.

11. Even on merits, the Petitioner has failed to point out any error of jurisdiction in the orders of the Court warranting supervisory correction, in exercise of Article 227 jurisdiction of this Court. This Court, therefore, does not find any infirmity in the orders of the Trial Court dated 30.04.2022 and 29.03.2023.

12. In this regard, it would also be apposite to refer to the observations made by the Coordinate Bench in the case titled **Kailash Sewani v. Manish Kumar Chaudhary** decided in **CM (M) 826/2022** dated 22.08.2022 wherein it was observed:

“10. The jurisdiction vested in this Court by Article 227 of the Constitution of India is not expected to be used as an avenue for a party to tide over the negligence exhibited by it before the Court below. Nor is Article 227 in the nature of mercy jurisdiction. Litigants cannot be casual about prosecuting the proceedings before the Court below and expect sanctuary from the High Court under Article 227.”

13. For the aforesaid reasons, this petition is completely devoid of merit



and is accordingly dismissed in *limine*. Pending applications, if any, stands disposed of.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 23, 2023

Aks/ms

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed By:HEMANT
PRATAP SINGH
Signing Date:27.11.2023
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