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

Date of decision: 24.11.2023

+ **CM(M) 1938/2023 & CM APPL. 60793-60795/2023**

M/S PRASAD PROCESS PVT LTD THROUGH ITS
AUTHORIZED REPRESENTATIVE Petitioner

Through: Mr. S.A. Saud, Advocate.

versus

SMT KASTURI RAJAN & ORS. Respondents

Through: Mr. Virender Goswami, Ms. Soni
Singh, Ms. Swati Goswami, Ms.
Parkhi Singh, Ms. Akanksha Moris &
Ms. Purvaja Goswami, Advocates for
respondents No.1 to 4.
Mr. Avneesh Garg, Advocate for
Respondent No.5.

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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. This petition filed under Article 227 of the Constitution of India impugns the order dated 07.10.2023 passed by ADJ, Patiala House Court, New Delhi ('Trial Court'), in CS No. 59209/2016, titled as **Vatsala Vescio v. Kasturi Rajan & Ors.**, dismissing the application filed by the Petitioner herein i.e., defendant no.5 under Order XVIII Rule 17 of the Code of Civil Procedure, 1908 ('CPC') and Order XVI Rule 1 CPC.



1.1 The Petitioner herein is the defendant no.5. The Respondent Nos.1 to 4 are defendant nos.1 to 4 and Respondent No.5 is the plaintiff before the Trial Court.

2. The learned counsels for the Respondents No.1 to 4 and Respondent No.5 respectively have entered appearance.

3. The learned counsel for the Petitioner states that the Trial Court dismissed the application filed by the Petitioner relying on the proceedings recorded in the order dated 01.08.2023 was passed in CM(M) 1206/2023; without looking at the merits of the application. He states that it is a matter of record that the Petitioner herein was not represented before this Court when order dated 01.08.2023 was passed in CM(M) 1206/2023. He states that therefore, the Petitioner cannot be non-suited on the basis of the order dated 01.08.2023.

4. In reply, learned counsel for the Respondents No.1 to 4 states that even on merits, the application of the Petitioner seeking recall of the order dated 02.03.2023 is not maintainable.

4.1 He states that a perusal of the Trial Court Record would show that since 08.08.2022, the Petitioner has been negligent in defending the suit and has delayed the recording of the evidence.

5. Similarly, the learned counsel for Respondent No.5 as well states that there is no merit in the application filed by the Petitioner before the Trial Court and the Petitioner herein is only protracting the adjudication of the trial.

5.1 He states that the Petitioner has filed a list of witnesses, enlisting 15 proposed witnesses, which are not relevant and the intention is to delay the suit.



5.2 He states that Respondent No.5, in fact, proposes to move an application under Order I Rule 10 CPC for deletion of the Petitioner in the civil suit pending before the Trial Court.

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

7. This Court has also perused the order sheet of the Trial Court dated 08.08.2022, 02.05.2023, 29.05.2023, 06.06.2023, 15.07.2023 and 04.09.2023. This Court is of the opinion that there is merit in the submissions of the counsel for the Respondents that trial has been delayed in this matter and the Petitioner has contributed to the said delay.

8. Further, there is an additional fact that even after the impugned order was passed by the Trial Court on 07.10.2023, however, the petitioner has approached this Court belatedly today on 24.11.2023 when the matter is listed for final arguments on 28.11.2023. This adds credence to the submission of the Respondents that the Petitioner herein is delaying the proceedings.

9. Though, on a perusal of the impugned order it is evident that the application of the Petitioner herein has not been decided by the Trial Court on merits but only by referring to the order dated 01.08.2023 passed by this Court in CM(M) 1206/2023. It is a matter of record that the Petitioner was not present on 01.08.2023 and therefore, the Petitioner's submissions were not considered by this Court before passing the said order.

10. Therefore, the impugned order is directed to be put in abeyance to enable the learned Trial Court to hear afresh the application of the Petitioner herein i.e., defendant no.5 and decide the same on its own merits. The issue of the relevancy of the proposed witnesses can be agitated by the Respondents before the Trial Court at the said hearing.



11. However, in view of the Petitioner's delay in approaching this Court, this liberty is granted to the Petitioner subject to the Petitioner paying legal costs of Rs.50,000/- to be paid equally to Respondent Nos. 1 to 4 and 5 respectively on or before 28.11.2023, the date already fixed before the Trial Court

12. Subject to the Petitioner tendering the costs of Rs. 50,000 on or before 28.11.2023, learned Trial Court is requested to hear and adjudicate upon the application of defendant no.5 on its own merits uninfluenced by the order dated 01.08.2023. The rights and contentions of Respondents No.1 to 4 and Respondent No.5 respectively are kept open.

13. It is directed that in case, the Petitioner fails to tender the costs and/or argue the application afresh on 28.11.2023, the order dated 07.10.2023 shall come into operation and the learned Trial Court is requested to proceed with the final arguments.

14. The Respondent No.5 will be at liberty to file application under Order I Rule 10 CPC, if so advised, which will be decided in accordance with law.

15. With the aforesaid directions, the present petition is disposed of. Pending application(s) if any stands disposed of.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 24, 2023

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Click here to check corrigendum, if any