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

+ CM(M) 1857/2024

DESIGNER INDIA

..... Petitioner

Through: Mr. Rahul Sinha and Mr. Shivee
Pandey Sinha, Advs.

versus

RAM PYARI (SINCE DECEASED)

THR LR AND ORS

..... Respondents

Through: Mr. Om Prakash Maglani(in person),
LR for R-1

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

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13.02.2024

CM APPL. 8516/2024—Exp. and CM APPL. 8517/2024—Exp.

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CM(M) 1857/2024 and CM APPL. 8515/2024--stay

3. The present petition has been filed under Article 227 of the Constitution of India impugning the order dated 18.10.2023 passed in Civil Suit No. 1938/2016 titled 'Smt. Ram Pyari vs. Smt. Rajinder Kaur & Ors.' by the ADJ (Shahdara), Karkardooma Courts, Delhi (hereinafter referred as '**Trial Court**') , whereby the Trial Court has dismissed the application under Order VIII Rule 1A read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as '**CPC**') moved by the petitioner herein seeking permission to place on record additional documents. The petitioner herein is the defendant no. 2 and being Legal Representative



(hereinafter referred to as 'LR') of deceased respondent no.1 herein i.e. Ram Pyari, is the plaintiff before the learned Trial Court. The respondent nos. 2 and 3 have been proceeded *ex-parte* by the learned Trial Court vide order dated 12.07.2017 and 17.02.1999 respectively.

4. The learned counsel for the petitioner submits that Ram Pyari, the respondent no.1 (deceased original plaintiff) has instituted a Suit for permanent injunction, partition, declaration, cancellation of instruments and for possession before the learned Trial Court, and summons of Suit were issued. The petitioner thereafter had put in appearance and contested the Suit by filing his written statement in the year 2001, since then proceedings before learned Trial were stayed till 2008 by this Court as a review petition was filed. It is submitted that in the year 2007 and 2009, possession certificate dated 14.06.2007 qua the possession of the Suit property and registered conveyance deed dated 20.02.2009 were transferred in favour of petitioner herein respectively, therefore, at the time of filing the written statement the same could not be filed. It is further submitted that this Court vide order dated 18.04.2009 abated the Suit as no one came forward to be substituted as LR of deceased original plaintiff.

5. It is submitted that learned Trial Court has erroneously mentioned in the impugned order that the plaintiff failed to file the said documents for 14 long years, but actually the documents since were executed in favour of the petitioner herein in the year 2007 and 2009 respectively. Therefore, this Court vide order dated 03.10.2013 allowed application under Order XXII Rule 3 of the CPC of respondent no. 1 herein for impleadment as LR of deceased original plaintiff and listed the matter for framing the additional issues. Further in the year 2016, on account of non-appearance of



respondent no.3 herein, learned Trial Court marked respondent no.3 *ex-parte* vide order dated 17.02.1999. Subsequently, respondent no.1 filed an application under Order VII Rule 14 (3) read with Section 151 of the CPC in 2016, seeking permission to place on record additional documents pertaining to developments qua the other proceedings between the parties. Further vide order dated 12.07.2017, learned Trial Court proceeded *ex-parte* against respondent no.2 and allowed the said application under Order VII Rule 14(3) read with Section 151 of the CPC, and, thus, there has been a delay of only 6 years for which the petitioner is willing to pay the cost.

6. Learned counsel for the petitioner submits that the said documents are necessary to be brought on record for the adjudication of the issues which have been framed based on pleadings of the parties vide order dated 06.07.2018. The onus of proving issue No.1 is on the petitioner as the petitioner is the *bona fide* purchaser of the Suit property. It is also submitted that the aforesaid documents are necessary to resolve the controversy between the parties.

7. It is submitted that the case is at the stage of recording of the evidence of the petitioner before the learned Trial Court.

8. Mr. Om Prakash Maglani, the LR of deceased respondent no.1 appearing in person has opposed the application by submitting that the petitioner has filed a frivolous application before the learned Trial Court to bring the additional documents on record and has failed to explain the delay of 6 years for not bringing the said documents on record though he had sufficient opportunity to do so.

9. It is also submitted that the petitioner is deliberately delaying the case before the learned Trial Court and has brought the attention of this Court to



order dated 13.04.2022 vide which the last opportunity was granted to the petitioner to lead his entire evidence in defence subject to cost of Rs. 10,000/-. It is further submitted that even the cost of Rs. 10,000/- imposed by the learned Trial Court has not been paid by the petitioner herein.

10. It is further submitted that the petitioner has not given any explanation for not filing the documents at the stage of leading his evidence which had commenced in the year 2020.

11. However, at this stage, it is submitted by Mr. Om Prakash Maglani that although the aforesaid facts are relevant but still he has no objection if the said documents are allowed to be placed on record so that the Suit before the learned Trial Court may not get further delayed.

12. In the interest of justice, in view of the circumstances hereinabove, the documents as mentioned in para 42 of the present petition are allowed to be placed on record subject to the payment of cost of Rs. 20,000/- to be paid before the learned Trial Court on the next date of hearing.

13. It has also been made clear that the petitioner shall further pay the cost of Rs. 10,000/- which was imposed on him vide order dated 13.04.2022 before the learned Trial Court.

14. Learned Trial Court is also directed to expedite the proceedings before it.

15. With the above observations, the present petition is allowed and disposed of accordingly.

SHALINDER KAUR, J

FEBRUARY 13, 2024/aks