



\$~22

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

+ **CM(M) 221/2019**

KRISHAN KUMAR

..... Petitioner

Through: Mr. V.C. Bharti, Adv.

Versus

GAON SABHA OF VILLAGE KARALA & ANR

..... Respondents

Through: None

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

%

09.04.2024

CM APPL. 6080/2019—Exp.

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

**CM(M) 221/2019, CM APPL. 6079/2019—stay, CM APPL. 6081/2019—
Exp. From filing TCR**

3. The present petition under Article 227 of the Constitution of India has been filed impugning the order dated 04.07.2018 passed by the JSCC/ASC/GJ, North West, Rohini Courts, New Delhi (“Trial Court”) in CS No.59059/2016 titled as “*Krishan Kumar vs Gaon Sabha Village Karala & Anr*” whereby the application filed by the petitioner under Order XVIII Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter “CPC”) was dismissed. The petitioner is the plaintiff and the respondents are the defendants before the learned Trial Court.

4. A recital of facts relevant for the disposal of the present petition reveals that the petitioner filed a present suit for permanent injunction against the respondents, seeking to restrain them, along with their officials



and servants, from dispossessing and disrupting the peaceful possession of the petitioner regarding the suit premises, namely, the house built on Khasra No. 271, measuring 5 Biswas, Village Karala, Delhi.

5. On 16.02.2016, the matter was first listed for plaintiff evidence. Thereafter, on 05.07.2017, the cross-examination of the petitioner could not be conducted as his counsel did not appear, being unwell. Consequently, the learned Trial Court closed the petitioner's / plaintiff's evidence and listed the matter for defendant evidence.

6. Aggrieved by the order dated 05.07.2017, the petitioner moved an application to recall the said order. The learned Trial Court, by its order dated 21.11.2017, allowed the petitioner one opportunity to conclude petitioner's / plaintiff's evidence, subject to the cost of Rs. 3000/-.

7. On 20.01.2018, the matter was fixed for petitioner's / plaintiff's evidence, but the petitioner brought a wrong set of documents. Subsequently, the learned Trial Court closed his right to plaintiff's evidence, stating that despite specific directions to complete the plaintiff's evidence, the petitioner failed to comply with the directions and hence, the matter was again listed for defendant evidence.

8. On 11.03.2018, the petitioner filed an application under Order XVIII Rule 17 read with Section 151 of the CPC, seeking to recall the order dated 20.01.2018. However, the learned Trial Court dismissed the petitioner's application, stating that the petitioner had been granted six opportunities to lead evidence and still failed to do so, therefore, the conduct of the petitioner/plaintiff did not warrant any leniency from the court.

9. The learned counsel for the petitioner contends that the learned Trial Court overlooked the fact that the petitioner is a senior citizen, who



regularly appeared before the court, however, on account of non-appearance of counsel for the petitioner, he should not suffer adverse orders due to fault of his counsel.

10. Furthermore, the learned counsel argues that only one opportunity is required to conduct the plaintiff's evidence, as the petitioner is the sole witness on his behalf, and allowing his evidence would not cause any harm.

11. None has appeared on behalf of the respondents.

12. The learned counsel for the petitioner submits that vide the order dated 08.02.2019, the learned counsel for the respondent no.1 has given no objection in allowing the present petition. However, no reply filed on behalf of respondent no. 2.

13. It is needless to say that the parties to a suit are to be diligent while pursuing their claims and pleas before the Court. The petitioner being the plaintiff, was granted opportunities to conclude his evidence by the learned Trial Court.

14. On 21.11.2017, a last opportunity was granted subject to costs and the matter was posted for 20.01.2018. However, on the said date of hearing, the plaintiff could not be examined again due to a fault of his own. Keeping in view the submissions made by the petitioner and the interest of justice, a single opportunity is granted to the petitioner to conclude his entire evidence on one date to be fixed by the learned Trial Court as per its convenience, subject to costs of Rs.10,000/-.

15. With the above observations, the petition along with pending applications stands disposed of.

SHALINDER KAUR, J.

APRIL 09, 2024/ss