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

% ***Date of decision: 27th September, 2024***

+ **CM(M) 346/2019 & CM APPL. 9238/2019 & CM APPL. 12553/2023**

RUSTAM BEG (DECEASED) THR LRSPetitioner

Through: **Mr. Rahul Srivastava with Ms. Arshiya Sharma, Ms. Divita Sharma, Advocates.**

versus

UNION OF INDIA & ORSRespondents

Through: **Mr. Harish Kumar Garg, Advocate for respondent Nos.1 and 2.
Mr. Parvinder Chauhan, Standing Counsel DUSIIB with Mr. Rahul Chauhan, Ms. Mahima Anand and Ms. Aakriti Garg, Advocates.**

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Sh. Rustam Beg (since deceased) had filed a suit for permanent injunction way back in the year 1996 with the following prayer:-

“25. That it is, therefore, most respectfully prayed that this Hon'ble Court be graciously pleased to pass a decree of permanent injunction in favour of the plaintiff and against the defendants, thereby restraining the defendants, their associates, servants, agents, representatives, etc. etc. from dispossessing the plaintiff from the suit premises i.e. bearing No.D-27, Ranjit Singh Road, New Delhi as shown in red colour in the site plan attached with the plaint and /or from causing any interference or obstruction in any manner in the peaceful use and enjoyment of suit premises without the due process of law.”

2. According to plaintiff, he was the legal occupant of the above said premises as it had been allotted to him by DDA (slum).



3. During course of the pendency of the suit, said plaintiff expired and his legal representatives were brought on record.
4. After the issues were framed, the case was put to trial.
5. Sh. Mirza Mehtab Beg, one of the legal representatives of the deceased plaintiff filed his evidence by way of affidavit and before his evidence could be recorded, an application was moved by him praying therein that there were several documents already available on record and due to some oversight or inadvertence, those documents could not be mentioned in the said affidavit. Fact remains that such request was, however, allowed by the learned Trial Court.
6. The plaintiff had also prayed that there were certain more documents with him which were vital in nature and were necessary for proper adjudication of the case and due to some oversight, these documents could not be placed on record. He sought permission to place those on record as well.
7. Learned Trial Court, vide impugned order dated 10.07.2017, disallowed such request by observing as under:-

“.....However, the court is not inclined to exercise its discretionary power in favour of the plaintiff thereby permitting him to file fresh documents on record on many counts. The plaintiff has failed to explain as to why the said documents were not filed at the stage of pleadings. The plaintiff has not stated that the said documents were not in his possession, which clearly indicate that the plaintiff was very much having possession of said documents since beginning, which he chose not file for the reason best known to him. The plaintiff has further failed to explain as to how the documents are relevant, material and necessary to decide the real issue in controversy. In fact, the application of the plaintiff is totally silent on these aspects.



In view of the above said discussion and in the interest of justice, the application of the plaintiff partly stands allowed. The plaintiff is directed to file fresh affidavit in evidence within 10 days with advance copy to the opposite party against receiving at least one week prior to NDOH incorporating the documents already placed on record and upon which the plaintiff wants to place reliance. It is clarified that the plaintiff shall be given only 03 opportunities to conclude PE.”

8. A review petition was also filed before the learned Trial Court which also met the same fate.
9. This is how the plaintiff has filed the present petition under Article 227 of the Constitution of India.
10. When the present petition was entertained by this Court for the first time on 26.02.2019, there was a direction to stay the suit.
11. Such interim order continues to be in operation.
12. It is noticed that, at one point of time, learned counsel for DDA had made statement before this Court that it had no role to play in the present matter and, therefore, it would be moving an application seeking its deletion and, eventually, DDA was deleted from the array of parties on 16.03.2023.
13. In order to appreciate the controversy in a better and effective manner, this Court had also directed the petitioner to place on record all such documents, which he wanted to place on record and which were declined by the learned Trial Court and all these documents, 28 in number, have been placed on record.
14. Learned counsel for the petitioner submits that the suit for



injunction had been filed in order to ensure that nobody interferes with his lawful possession with respect to the property in question i.e. D-27, Ranjit Singh Road, New Delhi and all such 28 documents which he wants to be placed on record, go on to indicate that he was very much resident of the above said property and some of these documents are of unimpeachable character like Aadhar Card, Voter Identity Card, Electoral Roll, Challans, several communications and certificates, bills of MTNL, Delhi Jal Board, receipts issued by LIC, Passport, etc.

15. Learned counsel for respondent No.1 and 2 states that the plaintiff should have been vigilant and should have filed these documents at the first available opportunity.

16. However, keeping in mind the nature of the relief sought and also the nature of the above said documents, even if these documents could not be placed on record by the plaintiff earlier, there was no real reason to have denied any opportunity in this regard, particularly, also for the reason that the testimony of plaintiff has yet not commenced as he had merely submitted his affidavit and the moment, he realized that these documents were also required to be placed on record, he moved such application then and there.

17. Undoubtedly, the plaintiff should have been vigilant and watchful in the first instance. Admittedly, there was no one to have prevented him from placing on record these documents which were all along under his power, control and possession.

18. Be that as it may, keeping in mind the overall facts of the case



and the nature of the documents, the present petition is, hereby, allowed and the plaintiff is permitted to place on record all the above said 28 documents, copies of which have already been placed on record by him before the learned Trial Court.

19. Needless to say, he would be at liberty to make reference about all these documents in his fresh affidavit.

20. However, for causing delay in the matter, the plaintiff is burdened with cost of Rs.25,000/-, which be deposited with Delhi Legal Services Authority of Central District.

21. The next date of hearing before the learned Trial Court is stated to be 03.10.2024.

22. Let fresh affidavit of said Sh. Mirza Mehtab Beg (PW1) be submitted before the learned Trial Court on 03.10.2024 and copy thereof be supplied to learned counsel for the defendants, well in advance.

23. Learned Trial court would, accordingly, take such affidavit on record and would proceed further with the matter in accordance with law.

24. The petition stands disposed of with the aforesaid directions.

(MANOJ JAIN)
JUDGE

SEPTEMBER 27, 2024/st