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

+ CM(M) 888/2023, CM APPL. 28377/2023--stay

SAHEB @ SAHAI KUMAR GUPTA Petitioner

Through: Mr. Sumit Rana, Adv.

versus

ASHOK KUMAR SHARMA Respondent

Through: Mr. Munish Chhoker, Adv.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER
22.03.2024

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1. The present petition has been filed under Article 227 of the Constitution of India impugning the order dated 30.09.2022 passed by the learned ASCJ-cum-JSCC-cum-Guardian Judge, East, Karkardooma, Delhi (hereinafter referred to as 'Trial Court') in C.S. No. 7569/2016 titled as "*Ashok Kumar Sharma vs Sh. Saheb @ Sahai Kumar Gupta*" whereby the application filed by the petitioner under Order XVIII Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") seeking to recall order dated 22.03.2022 whereby his right to lead defendant's evidence was closed by the learned Trial Court.

2. The procedural background of the case unveils with the respondent herein filing a suit for permanent and mandatory injunction against the petitioner vide CS No.7569/2016, restraining the petitioner from raising any unauthorized construction over the Property bearing No.E-13, village



Ghazipur, Delhi 110096.

3. Subsequent thereto, the petitioner herein raised his defence by way of written statement in the present suit and also filed a counter claim under Order VIII Rule 6A read with Section 151 of the CPC.

4. Thereafter, the course of proceedings followed and the issues were framed on 29.01.2016, the matter was fixed for plaintiff evidence on 11.04.2016 and the same was completed on 17.02.2020 after which the defendant was directed to file affidavit of evidence for 23.03.2020. However, due to Covid Pandemic and owing to various reasons, such as leaves of the Presiding Officer, joint adjournments and other technical reasons the evidence could not be proceeded till 17.02.2020. On 22.03.2022, as the petitioner and his counsel were severely affected by Covid-19, the evidence could not be led and thereafter the opportunity to lead evidence was closed. Moreso, during the course of pandemic phase, only the matters urgent in nature were taken up by the Courts, however, the present matter was not located as an urgent case.

5. The learned counsel for the petitioner submits that due to Covid pandemic and the change in office from Trans Yamuna Delhi area to Model Town Delhi, certain files were misplaced and the petitioner himself being a migrant labour from Bihar was struggling for survival during the covid period. Therefore, he could not avail the opportunities granted by the learned Trial Court to lead evidence on his part.

6. Learned counsel further submits that to avail a last opportunity to lead evidence in defence, the petitioner moved an application under Order XVIII Rule 17 CPC, seeking the aforesaid relief and also filed evidence by way of affidavit, however, the learned Trial Court declined to grant the same.



7. Concluding the arguments, the learned counsel submits that granting one last opportunity to the petitioner would not cause any harm to the respondent but grave prejudice will be caused to the petitioner in case the same is not allowed.

8. Conversely, learned counsel for the respondent submits that no case of exercise of supervisory jurisdiction has been made out by the petitioner since the learned trial court has passed a well-reasoned and justified order considering the overall facts and circumstances of the case.

9. The learned counsel for the respondent vehemently opposed the submissions made by the petitioner submitting that the present petition is liable to be dismissed as the same is based upon self-suited averments and allegations which are contradictory to the records. It is a matter of record that the learned trial court had granted multiple opportunities to the petitioner to lead evidence however despite the opportunities, the petitioner could not lead evidence and thus the learned trial court had no option but to close the evidence of the petitioner in these circumstances.

10. Finally, the learned counsel submits that the petitioner has adopted a lackadaisical approach and the application filed under Order XVIII Rule 17 of the CPC is a mere delay tactic before the learned Trial Court.

11. Submissions heard, record as well as the impugned order perused.

12. Pertinently, the learned Trial Court had made following observations vide impugned order while discussing the application under Order XVIII Rule 17 of the CPC:

“6. Coming to the present case in hand, perusal of recrrrd reveals that on 17.02.2020 Ld. Predecessor court after closing the PE directed the defendant to file his affidavit in evidence and supply advance copy of the same to the plaintiff and fix the



matter for 23.03.2020.

Thereafter, on 23.03.2020, 21.07.2020 and 17.08.2020 due to Corona Pandemic, matter stands adjourn.

Thereafter, again on 20.10.2020 Ld. Predecessor Court again granted opportunity to defendant to file affidavit in evidence and supply advance copy of the same. However, defendant for the reasons best known to him failed to comply with said order and failed to file affidavit in evidence on 15.02.2021, 14.09.2021 and 20.12.2021. Thereafter on 22.02.2022, Ld. Predecessor Court while observing that sufficient opportunities have been granted to defendant to file the affidavit, and he failed to comply with the same, closed the opportunity of the defendant to lead evidence.

7. The reasons so stated by the applicant in his application does not inspire the confidence of this court, as each on the abovesaid date, either defendant or his counsel were appearing before the court and were well aware of the proceedings pending before the court.

8. In light of the law and facts discussed above, since sufficient opportunities have been granted to defendant to lead DE, and further that no cogent reason has been stated by the defendant for not filing his evidence, application so filed by the defendant under Order XVIII Rule 17 CPC stands dismissed.”

13. Undisputedly, the multiple opportunities were granted to the petitioner to lead evidence in defence. The impugned order reveals that after closing plaintiff's evidence, the matter was listed for the first time for defence evidence on 23.03.2020. The learned Trial Court has also observed that on 23.03.2020, 21.07.2020 and 17.08.2020 due to Covid pandemic, evidence could not be recorded as the matter was adjourned and the matter came to be listed on 20.10.2020.

14. Apparently, on 15.02.2021, 14.09.2021 and 20.12.2021, the



defendants evidence could not be recorded and finally on 22.03.2022, learned Trial Court closed the opportunity of the defendant to lead evidence in defence. For the aforesaid dates, when the evidence could not be led, the petitioner has given the explanation that due to Covid-19, the counsel for petitioner had to shift his office from one place to another, so certain files of the office got misplaced and petitioner being a native of Bihar and migrant labour was also facing acute occupational survival issue.

15. It is also common knowledge that people suffered hardships during and after Covid period and the country went through two lockdown periods and evidently, the repercussions were grave. Taking note of such a situation, the Hon'ble Supreme Court vide the judgment titled "***Suo Moto Writ Petition (c) No.3 of 2020 In Re: Cognizance for Extension of Limitation***", the Hon'ble Supreme Court extended the period of limitation for every kind of limitation w.e.f. 15.03.2020 to 28.02.2022.

16. Unfortunately, the learned Trial Court has not considered the reasons mentioned in the application under Order XVIII Rule 17 CPC while passing the impugned order but merely noted the various dates when the evidence could not be led. Probably, it has also not considered the orders passed on said dates of hearing as it is not being reflected in the impugned order.

17. The learned Trial Court has not considered the reasons for delay in true spirit and apparently, got carried away with the number of dates where evidence could not be lead. The learned Trial Court has also not taken note of the court proceedings mentioning the reasons of adjournment.

18. In the considerate view of this Court, the impugned order dated 30.09.2022 dismissing the application of petitioner under Order XVIII Rule 17 CPC seeking to recall order dated 22.03.2022 is not sustainable and



hence, is set aside.

19. However, the petitioner is granted only one opportunity to conclude its evidence on the date to be fixed by the learned Trial Court as per its convenience, nonetheless, on taking note of the fact that the trial has to be concluded expeditiously.

20. Consequently, the petition is allowed.

SHALINDER KAUR, J.

MARCH 22, 2024

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