



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

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Judgment reserved on : 18 January 2024

Judgment pronounced on : 19 January 2024

+ **C.R.P. 148/2023**

JAI SHARMA & ANR.

..... Petitioners

Through: **Ms. Kamna Gahlaut, Adv.**

versus

RAMWATI & ANR.

..... Respondents

Through: **Mr. Vijayant Kumar and Mr. Manoj Kumar, Advs. alongwith Smt. Ramwati and Sh. Prempal in person**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

CM APPL. 30364/2023

1. This is an application under Section 151 of the Code of Civil Procedure, 1908¹ moved on behalf of the petitioners seeking condonation of delay of 51 days in filing the present revision.

2. Heard. For the reasons stated in the application, the same is allowed and delay in filing the revision is condoned.

C.R.P. 148/2023

3. This revision is filed on behalf of the petitioners, who are plaintiffs, in Suit bearing No.255/2019, whereby his application under Order VII Rule 14 read with Section 151 of the CPC has been

¹ CPC



dismissed by learned Senior Civil Judge-cum-Rent Controller, North-East District, Karkardooma Courts, Delhi² vide order dated 22.12.2022. Reply to the application has already been filed on behalf of the respondents, who are the defendants, in the pending matter.

4. Having heard the learned counsel for the parties and on perusal of the record, shorn of unnecessary details, suffice to state that the petitioners/plaintiffs have filed a suit for recovery of possession, recovery of arrears of rent and *mesne* profits/damages and permanent injunction claiming that they jointly purchased the suit property from Smt. Pinky wife of Mr. Rohtash for valuable consideration vide various sale documents, *viz.*, General Power of Attorney, Will, payment/receipt, possession letter and affidavit all dated 14.12.2012 and the suit property was let out by the petitioners/plaintiffs to the respondent No.1/defendant No.1 for residential purposes at a monthly rent of Rs. 3500/- exclusive of electricity charges by way of an oral tenancy in the month of May, 2016.

5. It was further their case that in the month of April, 2017 rent was enhanced to Rs. 4,000/- per month and the respondents/defendants paid rent only for 4-5 months but thereafter they stopped paying the agreed monthly rent. The petitioners/plaintiffs were aggrieved that the respondents/defendants fell in arrears of rent since July, 2017 @ Rs. 4,000/- per month and the same was neither paid nor tendered despite legal notice dated 27.06.2018, and hence, filed the suit seeking aforesaid reliefs.

² Trial Court



6. Needless to state that the respondents/defendants on receiving the summons for settlement of issues, moved an application under Order VII Rule 11 of the CPC besides filing their written statement and contesting the claim *inter alia* raising a plea that they had been inducted into the suit property on the same being purchased by the defendant No.1 for a total consideration of Rs. 6,00,000/- and Rs. 2,80,000/- was paid in cash whereas remaining Rs. 3,20,000/- was agreed to be paid in equal monthly instalments of Rs.5,000/- but subsequently the petitioners/plaintiffs became dishonest and they have not come to the Court with clean hands.

7. It appears that issues have already been framed in the present matter and is at the stage where the petitioners/plaintiffs have been called upon to lead their evidence. The instant application under Order VII Rule 14 read with Section 151 of the CPC was moved for bringing on record the following documents at their behest:

- “(a) GPA, agreement to sale, receipt, possession letter etc. dated 14th December 2012; and
- (b) Copy of the complaint given by the defendant to the SHO, PS Karawal Nagar; and
- (c) Copy of ATR filed by police in the court of Sh. Devender Kumar, the then learned CMM.”

8. The said application came to be dismissed by the learned Trial Court, who relied on decision of this Court in the case of **Asia Pacific Breweries v. Superior Industries**³ and made following observations:

“13. In the said case in hand, it is not the case of the plaintiff that these documents were not in his knowledge, power or possession. The plaintiff has not even mentioned as to why these documents were not filed along with the plaint. Further the documents sought to be produced by the by the plaintiff at this stage are not in his

³ dated 06.03.2009 (Delhi High Court)



power or knowledge or could not have been produced despite exercise of diligence on his part. Therefore, I find no reason as to why this court should allow filing of these documents at this stage when the plaintiff is not able to satisfy the court about the reasons for not filing the same with the plaint or before framing of the issues. The only ground stated by the learned counsel for the plaintiff is that due to inadvertence of the previous counsel they did not file the documents. Inadvertence, as held by the Hon 'ble High Court of Delhi in the case of *Shri Harkesh Singh (supra)*, is no ground for allowing an application for production of documents at the stage of evidence.

14. Hence, the application is dismissed being devoid of merit.

15. No order as to costs.

16. List the matter on 13.02.2023 for PE and arguments.”

9. At this stage, it may also be stated that during the course of arguments it was brought out that one witness, namely Yogesh Gupta has since already been examined at the behest of the petitioners, and incidentally petitioner No.1/plaintiff No.1 also appears to have filed his affidavit in evidence dated 21.09.2019. It is also evident that no list of witnesses has been filed on behalf of the petitioners/plaintiffs either and now the matter is listed for remaining plaintiffs' evidence on 25.01.2024.

10. Learned counsel for the petitioners/plaintiffs in support of her submissions that the petitioners/plaintiffs are at liberty to file these documents even at the stage of recording of evidence of the parties has strongly relied on decision of the Supreme Court in **Mohammed Abdul Wahid v. Nilofer & Anr.**⁴

11. **First things first**, the petitioners/plaintiffs in paragraph (1) of the plaint, which is on the record, have indeed made averments that they are owners of the suit property by virtue of sale documents dated

⁴ 2023 INSC 1075



14.12.2012, evidently such documents were not filed along with the plaint as mandated by Order VII Rule 14 of the CPC.

12. All said and done, the respondents/defendants do acknowledge that they have purchased the suit property by virtue of an oral agreement from the petitioners/plaintiffs. Therefore, even if the said documents are allowed to be placed on the record at this stage, there is going to be no prejudice to the rights of the respondents/defendants. At the cost of repetition, the respondents/defendants claim that although part payment has been made and they have been making payment of the balance amount through instalments, allegedly an attempt was made in the month of September, 2017 when the petitioners/plaintiffs came to their house along with some anti-social elements and threatened them and their family members to get them forcibly evicted from the suit property using muscle power. Unfortunate as it may appear, learned counsel for the parties argued the entire matter at a different tangent without even fully appreciating the facts germane to the present matter.

13. In view of the foregoing discussion, I find that the learned Trial Court failed to appreciate the whole gamut of the case and filing of such documents at a belated stage would not result in any prejudice to either of the parties. The documents sought to be placed neither come as a surprise to the respondents/defendants nor do they improve upon the case of the petitioners/plaintiffs either. The said exercise is not falling foul of Order VII Rule 11 C.P.C.



14. In the aforesaid circumstances, the present revision is allowed and the impugned order dated 22.12.2022 is hereby set aside with the directions to the learned Trial court to allow the petitioners/plaintiffs to place the relevant documents on the record subject to payment of costs of Rs. 10,000/- to the opposite party, which be deposited in their bank account. The petitioners/plaintiffs, if so elect, shall be at liberty to file an additional affidavit with regard to such documents subject to further costs of Rs. 5,000/-

15. Nothing expressed in this judgment shall tantamount to an expression of opinion on the merits of the case.

16. A copy of this judgment be sent to the learned Trial court for information and necessary compliance.

DHARMESH SHARMA, J.

JANUARY 19, 2024

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