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

+ CM(M) 995/2023, CM APPL. 31748/2023--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. 7536/2016 titled as "*Saheb @ Sahai Kumar Gupta vs Ashok Kumar Sharma*" whereby the application filed by the petitioner under Section 151 Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") seeking to recall order dated 27.05.2022 vide which his right to lead counter claimant 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 and also filed the present counter claim i.e. C.S. No. 7536/2016 before the learned Trial Court against the suit of the respondent under Order VIII Rule 6A read with Section 151 of the CPC.

4. Thereafter, the course of proceedings followed and the final issues were framed on 11.12.2018. The matter was then posted for counter claimant evidence (CE) and the same was fixed w.e.f. 04.02.2019 to 27.05.2022. Whereas on 27.05.2022, the learned Trial Court closed the opportunity to lead CE on behalf of counter claimant. The petitioner on 05.09.2022 filed an application under Section 151 CPC for seeking last and final opportunity to lead the counter claimants' evidence but the application came to be dismissed by the learned Trial Court vide order dated 30.09.2022. Aggrieved, the petitioner filed the present petition assailing the impugned order.

5. The learned counsel for the petitioner submits that petitioner on February 2020 onwards, due to unavoidable situation created because of Covid Pandemic, could not appear. It was submitted that circumstances were tougher for petitioner being a migrant labour from Bihar, he needed to take care of his family. Further, due to covid pandemic, there was a change in office of his Advocate from Trans Yamuna Delhi to Model Town Delhi, certain files were misplaced. Therefore, petitioner could not avail the opportunities granted by the learned trial court to lead evidence on his part.

6. Concluding the arguments, the learned counsel submits that petitioner be granted only one opportunity to summon its necessary witnesses and to lead his evidence, else grave prejudice will be caused to the petitioner, if the



same is not granted.

7. At the outset, learned counsel for 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.

8. The learned counsel for the respondent also 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 counter claimant in these circumstances.

9. Finally, the learned counsel submits that the petitioner has adopted a lackadaisical approach and the application filed under Section 151 CPC is a mere delay tactic before the learned Trial Court.

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

11. On reading of the impugned order, it is observed that the learned trial court has noted that the affidavit in evidence was filed by the counter claimant/petitioner herein on 04.02.2019 and opportunities from 01.11.2019 to 22.03.2022, were granted to the petitioner to lead evidence. Lastly, the matter was listed on 27.05.2022 whereby again further time was sought by the counter claimant to lead evidence and thus the learned trial court closed the opportunity to lead further evidence.

12. Pertinently, the learned Trial Court had made following observations vide impugned order while discussing the application under Section 151



CPC:

“6. Perusal of file reveals that in the present case initially issues were framed on 17.07.2017 and thereafter again on 11.12.2018 since the application U/o. VI Rule 17 CPC was filed.) On 11.12.2018 counter-claimant was directed to file affidavit in advance and supply advance copy of same to the respondent. It is pertinent to state in here that affidavit in evidence was filed by the counter claimant on 04.02.2019. Perusal of file also reveals that thereafter matter was listed for 15.04.2019, 15.07.2019 and 09.09.2019 when Ld. P.O. was on leave.

Thereafter, matter was listed for 01.11.2019, 10.12.2019, 17.02.2020, 29.03.2020, 21.07.2020, 17.08.2020, 20.10.2020, 15.02.2021, 14.09.2021 and 20.12.2021 and despite giving repeated opportunities on the above Said dates, applicant/ counter claimant failed lead evidence. Thereafter Ld. Predecessor Court on 22.03.2022 again granted one opportunity to counter claimant to lead evidence subject to cost of Rs.1,000/- and matter was listed for 04.05.2022. Since, on 04.05.2022 the counsels are informed to be abstaining from work, matter was listed for 27.05.2022. On 27.05.2022 again time was sought on behalf of counter claimant when this Court closed his opportunity to lead further 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 leading evidence, application so filed by the defendant under Order 151 CPC stands dismissed.”

13. It is not disputed that the affidavit in evidence was filed by the petitioner on 04.02.2019. The learned Trial Court has observed that on



15.04.2019, 15.07.2019 and 09.09.2019, the learned Presiding Officer was on leave, consequently, the evidence could not be led on these dates of hearing. Apparently, on 01.11.2019, 10.12.2019, 17.02.2020, 23.03.2020, 21.07.2020, 17.08.2020, 20.10.2020, 15.02.2021, 14.09.2021 and 20.12.2021, the petitioner did not lead evidence though opportunity was granted. The petitioner for not examining witnesses has stated that and rightly so that maximum dates of hearing fell during the time when the entire country was engulfed with Covid pandemic. The ramification of the Covid were grave and devastating.

14. It is a matter of common knowledge that during the Covid period, the courts were functioning through video conferencing mode/hybrid mode and in between were also functioning normally considering the covid situation. Further, during the covid period, even when the courts started functioning for some period of time, only the urgent matters were taken up for hearing. The learned Trial Court has not clarified that the dates of hearings which essentially fell during the Covid time, if learned Trial Court was functioning through video conferencing/hybrid mode/physically. Also whether the matter of petitioner was treated as an urgent case.

15. It is also common knowledge that people suffered hardships during and after the 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



as mentioned in the application under Section 151 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. To the contrary, petitioner has furnished sufficient cause for not being able to lead his evidence.

17. In the considerate view of this Court, the impugned order dated 30.09.2022 dismissing the application seeking to recall order dated 27.05.2022 is not sustainable and hence, is set aside.

18. 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.

19. Consequently, the petition is allowed.

SHALINDER KAUR, J.

MARCH 22, 2024
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