



\$~64

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

% ***Date of decision: 16th July, 2024***

+ **CM(M) 2922/2024 & CM APPL. 39321/2024, CM APPL. 39320/2024**

JAWAHAR SINGH

.....Petitioner

Through: **Ms. Smita Maan, Mr. Vishal Maan
and Mr. Aditya Singh, Advocates
(through V.C.)**

versus

NARESH KUMAR (DECEASED) THR. LRS.

.....Respondent

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Present petition has been filed under Article 227 of the Constitution of India.
2. Petitioner is the sole defendant before the learned Trial Court and is defending a suit for possession, arrear of rent and mesne profit/damages and permanent injunction.
3. Admittedly, the issues were settled way back on 21.02.2015 and then the parties were directed to submit list of witnesses, affidavit and documents within 15 days with advance copy to the opposite party.



4. The evidence of the plaintiff was over on 19.08.2016 and thereafter, the defendant was asked to lead evidence.
5. The defendant himself entered into witness box and his cross-examination was completed on 27.09.2018.
6. On 05.08.2023, defendant moved an application before the learned Trial Court under Order XVI Rule 1 CPC requesting therein that he may be permitted to place on record a list of witnesses and be also permitted to examine such witnesses.
7. Since the application had been filed after a gap of around 5 years and no plausible reasons had been given, learned Trial Court dismissed the above said application.
8. Such order is impugned before this Court.
9. When asked, Ms. Mann, learned counsel for the petitioner submitted that it was solely on account of inadvertent error on the part of the conducting counsel that the list could not be filed in the Court. According to her, defendant was not negligent and he had prepared the list of witnesses very promptly but, somehow, it was kept on the record of the file of the counsel and was never submitted before the learned Trial Court.
10. The aforesaid reason cited by the learned counsel for the petitioner does not seem to be palatable and digestible. This is being canvassed so that the Court somehow gives some indulgence as, generally, a party is not penalized for inaction of its counsel. Such



contention does not inspire any confidence. The list of witnesses could have been submitted, at least, when the defendant was asked to enter into witness box. Nothing of that sort was contemplated, even.

11. It seems that the defendant has now woken up from his slumber and in order to somehow get some kind of concession from the Court, it is being attempted to portray as if it was on account of the inadvertent error on the part of the conducting counsel.

12. Since the defendant himself had been appearing regularly before the learned Trial Court, he should have been careful and watchful enough. He seems to be responsible for his own miseries.

13. It is quite obvious that the learned Trial Court has already given enough of indulgence to the defendant. Ideally, when the defendant's evidence had been closed in the year 2018, the Court should not have kept the case pending any further and should have rather fixed it for final arguments. For some reason, since the case remained pending before the board of the learned Trial Court, the petitioner herein is taking a chance and has moved the aforesaid application seeking permission to place on record the list of witnesses and to examine them as well.

14. Be that as it may, I do not find merit or substance in the petition under disposal.

15. Moreover, I cannot be unmindful of the fact that this Court is exercising its supervisory jurisdiction under Article 227 of the



Constitution of India and such jurisdiction needs to be exercised only when there is apparent jurisdictional error. The duty of the supervisory Court is to interdict if it was found that findings were perverse i.e. (i) Erroneous on account of non-consideration of material evidence, or (ii) Being conclusions which are contrary to the evidence, or (iii) Based on inferences that are impermissible in law. On the other hand, it is noticed that the order passed by the learned Trial Court seems justifiable and logical and it was only on account of the fact that the defendant himself was dormant, the application had been dismissed. This Court, therefore, cannot come to rescue of the petitioner who slept over the matter for around 5 years.

16. In view of the foregoing discussion, the present petition is hereby dismissed.

(MANOJ JAIN)
JUDGE

JULY 16, 2024
st