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

% ***Date of decision: 2nd September, 2024***

+ **CM(M) 3293/2024 & CM APPL. 50375-50377/2024**

SHRI RAVI SETIA & ANR.

.....Petitioner

Through: Mr. H.S. Phulka, Senior Advocate,
Mr. Alakh Kumar, Mr. Amresh
Mathur, Ms. Surpreet Kaur and Mr.
Aroni Chaudhary, Advocates

versus

SHRI SOM NATH SETIA & ORS.

.....Respondent

Through: Ms. Arti Bansal, ASC for DDA

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 50376-50377/2024 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 3293/2024 & CM APPL. 50375/2024

1. The petitioners had challenged the judgment and decree dated 24.07.2017 by filing appeal which was registered as RCA 72/2017. During pendency of the aforesaid appeal, appellants moved an application under Order XLI Rule 2 r/w Section 151 CPC seeking permission of the Court to raise additional grounds.
2. The aforesaid request has been declined by the learned Appellate Court vide order dated 02.07.2024.
3. Such order is under challenge.
4. According to learned Senior Counsel for appellants, appellants have not raised any additional ground, different or inconsistent vis –a-vis the one



which had been taken during the course of final arguments before the learned Trial Court. Admittedly, appellants were proceeded against *ex parte* and their written statement was also not before the learned Trial Court.

5. Learned Appellate Court observed that by virtue of application moved under Order XLI Rule 2 r/w Section 151 CPC, appellants were trying to raise following additional grounds: -

- i) *The trial court shifted the onus of proving the case upon the defendant.*
- ii) *The trial court failed to appreciate that the decree passed by the Pili Banga Court was a reasoned decree.*
- iii) *The Trial court failed to appreciate that the plaintiff had not led any evidence to show that the signatures on the Power of Attorney were not the signatures of plaintiff and that the Power of Attorney was forged.*
- iv) *Plaintiff stated that summons were served at Abhohar address and plaintiff has himself stated in his plaint that the Abhohar house belongs to the plaintiff.*
- v) *No record was summoned from the Pili Banga court to show that no summon was served upon the plaintiff and who received the summons on behalf of the plaintiff.*
- vi) *Plaintiff has played a fraud on the Trial court by alleging facts which are contrary to the judicial proceedings of other cases.*
- vii) *It is necessary to resolve the issue in controversy and the appellant should be allowed to urge additional ground.*

6. As already noticed above, appellants were *ex parte* and for whatever reasons, their written statement was also not on record.

7. The attention of this Court has also been drawn towards the judgment passed in the Civil Suit in question wherein the learned Trial Court has even taken note of the fact that onus with respect to issue no. 2 was on the plaintiff, though with respect to the other two issues, the onus was put on the defendants.

8. It seems that DDA was contesting the matter as one of the defendants though the private parties remained *ex parte* and they did not even



cross-examine the plaintiff. It is contended by learned counsel for the petitioners that they had moved an application seeking recall of the witnesses of the plaintiff but such application was also disallowed.

9. Be that as it may, appellants herein were *ex parte* and their written statement was also not on record and, therefore, the ground of challenge is much more restricted and constricted. Moreover, aforesaid appeal was filed in the year 2017 and there is no explanation, much less a justifiable one, as to why such application seeking additional grounds was moved five years down the line.

10. This Court is also conscious of the fact that said appeal is now listed for final hearing before the learned Appellate Court.

11. By filing the present petition under Article 227 of the Constitution of India, the petitioners have invoked supervisory jurisdiction of this Court and keeping in mind the peculiar factual matrix and the facts and circumstances of the case, no compelling reason exists to interdict with the impugned order. Reference be made to *Puri Investments Versus Young Friends and Co. and Others: 2022 SCC OnLine SC 283*.

12. In view of the above, the present petition is hereby dismissed.

13. However, before parting, this Court would like to clarify that if any additional ground as mentioned in the application moved by the appellants under Order XLI Rule 2 CPC is found to be covered already, even if by inference, the learned Appellate Court may consider the same while hearing final arguments.

MANOJ JAIN, J

SEPTEMBER 2, 2024/dr