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

% *Date of decision: 06th August, 2024*

+ CM(M) 267/2015

SHANTI DEVI

.....Petitioner

Through: Mr. Alankar Tewari, Advocate.

versus

NET RAM & ORS

.....Respondents

Through: Mr. Shankar Lal, Advocate with
respondent in person.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT (oral)

1. Petitioner is aggrieved by order dated 16.01.2015 passed by the learned Trial Court whereby his application moved under Section 151 CPC seeking restoration of one application moved under Order IX Rule 13 CPC has been dismissed.
2. Admittedly, Suit No.282/1971 had been filed by plaintiff Smt. Budhi against Smt. Nathi Devi, Sh. Nand Kishore and Sh. Prabhati Ram. Such suit was decreed on 27.05.1972.
3. It is contended that defendant No.3 Prabhati Ram filed one application under Order IX Rule 13 CPC seeking setting aside of such decree.
4. Such application was not pursued in the manner in which it



should have been and, resultantly, it was dismissed-in-default on 27.02.1976.

5. Thereafter, the representative of said Sh. Prabhati Ram moved an application under Section 151 CPC praying therein that such application, moved under Order IX Rule 13 CPC and which had been dismissed in default on 27.02.1976, be permitted to be restored.

6. Obviously, the above said application, moved in January, 2015, had been filed after around four decades. It is also apparent from the impugned order that when the record was requisitioned, it was reported that the file had been destroyed in fire and, therefore, even the file, which was very old, was not traceable.

7. Fact remains that the petitioner was not able to give any justifiable reason as to why the above application seeking restoration could not be moved all these years and, therefore, his such application seeking restoration was dismissed.

8. Such order is under challenge.

9. During course of the arguments, learned counsel for the petitioner has stated that when this Court was seized with one revision petition i.e. CRP 410/1999, this Court had rather given permission to challenge the decree in question and taking cue from the aforesaid direction, the application seeking restoration was filed without any delay.

10. However, this Court does not find any merit in the above said



contention.

11. The above said order dated 16.12.2014 is very brief and the same is reproduced as under:-

“This case was argued for over one hour. Considerable part of the Judgment was also dictated, however, at this stage, it is agreed and the present revision petition is disposed of with the consent order that the petitioner Smt Nathi will be the legal representative of Smt. Buddhi in terms of the Will Ex.AW1/1. and she for the present will be entitled to execute the judgment and decree dated 27.5.1972 with respect to the suit property bearing no.10614, Gali Nale Wali, Manakpura, Karol Bagh, New Delhi-05. However, respondent no. 1/defendant no.3/Sh. Prabhati Ram is given liberty, of course in accordance with law, to question the judgment and decree dated 27.5.1972. If respondent no. 1 is successful in challenging the finality of the judgment and decree dated 27.5.1972, only in that circumstance the decree cannot be executed, however, for the present there is no bar to the execution of the decree by Smt. Nathi as a legal heir of Smt. Buddhi on the basis of the Will Ex.AW1/1.

Petition is disposed of in view of the aforesaid observations.”

12. By virtue of the above order, defendant No.3 - Sh. Prabhati Ram was given liberty *albeit* in accordance with law to question the judgment and decree dated 27.05.1972. However, in the case in hand, the challenge was already made by the same defendant way back in 1976 when he had moved an application praying for setting aside such judgment and decree, by moving an application under Order IX Rule 13 CPC.

13. Since the aforesaid application was not pursued properly and was dismissed in default on 27.02.1976, the petitioner should have given some justifiable reasons as to why it took him around 40 years



in moving the application under disposal whereby he was attempting to seek restoration of said application.

14. The learned Trial Court seems fully justifiable in dismissing the application while holding that the limitation period had expired long back and there was unexplained delay and laches in filing such application.

15. I also do not find any reason to come to any different view.

16. Moreover, it also needs to be emphasized that jurisdiction of this Court has been invoked by filing a petition under Article 227 of Constitution of India and the scope of such supervisory jurisdiction is very much restricted and constricted. This Court, while exercising such supervisory power can interdict if it is found that findings are 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. Reference be made to *Puri Investments Versus Young Friends and Co. and Others: 2022 SCC OnLine SC 283*. There is nothing to suggest above.

17. Consequently, finding no merit or substance in the present petition, the same is hereby dismissed.

(MANOJ JAIN)
JUDGE

AUGUST 06, 2024/st