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

+ **CM(M) 99/2025 & CM APPL. 3024/2025 STAY**

ABHAY JAIN

.....Petitioner

Through: Mr. B.B.Gupta, Sr. Adv. with Mr.
Ankit Gupta, Mr. Achal Gupta and
Mr. Jaran Jain, Advs.

versus

SEEMA GUPTA

.....Respondent

Through: Mr. Bhagat Singh and Mr. Prashant
Gupta, Advocates

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER
20.01.2025

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1. This is a petition under Article 227 of the Constitution of India for setting aside the impugned order dated 05.11.2024 and 17.12.2024, passed by the trial court in Eviction Petition titled "Smt. Seema Gupta Vs. Shri Vinod Kumar Jain & Anr." bearing No. RC ARC 487/18.

2. On 05.11.2024, while the case was listed for respondent's evidence, witness Abhay Kumar Jain was not present. An adjournment was sought by the Advocate of the respondent on the ground that witness was not well. No medical document was produced. Taking note that petitioner has failed to lead its evidence since the year 2022, opportunity to lead respondent's evidence was closed by the trial court.



3. Petitioner filed an application for review of the order dated 05.11.2024, but the said application was also dismissed vide impugned order dated 17.12.2024.
4. Learned counsel for the petitioner submits that along with the application for review of order dated 05.11.2024, petitioner had annexed medical certificate issued by the doctor but trial court failed to take note of the same and dismissed his application. It is further submitted that trial court failed to take note that petitioner hardly received 2-3 opportunities to lead respondent's evidence, and therefore, his conduct was not such that he should not have been granted another opportunity, more so, when he was unwell to appear on 05.11.2024.
5. Petition has been vehemently opposed by the learned counsel for the respondent. It is submitted that petitioner has tried to mislead the Court by informing on the last date that advance copy of the petition was sent through email ID of the respondent i.e. "seemagupta@yahoo.com." It is submitted that the said email ID does not belong to the respondent and is created by the petitioner to mislead the Court and obtain relief from this Court at the back of the respondent.
6. It is further submitted that petitioner received sufficient opportunities for leading its evidence since 2019, and therefore, there is no merit in the present petition. It is also submitted that the present petition is not maintainable under Article 227 of the Constitution and further that review application was filed after the expiry of limitation period of 30 days from the date of passing of impugned order dated 05.11.2024. It is thus argued that petition is liable to be dismissed with heavy cost.



7. A perusal of the various orders placed on record reveal that petitioner's evidence was closed on 29.11.2024, where after, the case was adjourned for respondent's evidence on 14.02.2022. It is borne out from the order dated 29.11.2021 that the counsel for the petitioner informed the Court that one of the respondents in the petition namely Salekh Chand Jain had expired on 24.11.2020.

8. On 30.08.2022, it was informed by the learned counsel for the petitioner that respondent No. 2 in the petition namely Mr. Vinod Kumar Jain expired on 25.01.2022. An application for substitution of legal heirs of Vinod Kumar Jain was finally allowed by the trial court vide order dated 13.08.2024, where after, the matter was listed for respondent's evidence on 24.09.2024.

9. It appears that no witness of the petitioner was present on 24.09.2024, and therefore, the matter was adjourned to 05.11.2024.

10. On the next date i.e. 05.11.2024, respondent did not appear, even though, his evidence affidavit was filed along with list of witnesses.

11. The record clearly reveals that though the case first got listed for respondent's evidence on 14.02.2022, but the evidence could not be recorded because of time taken in bringing on record the legal heirs of Ms. Vinod Kumar Jain. Petitioner received very few genuine opportunities for leading the evidence. The medical certificate issued by the doctor shows that petitioner was not well on 05.11.2024.

12. In the opinion of the Court, the *lis* between the parties should be decided on merits and no prejudice would be caused to the respondent in case the petitioner is granted an opportunity to lead evidence.



13. The impugned orders dated 05.11.2024 and 17.12.2024 are therefore set aside and petition is allowed subject to the condition that petitioner shall appear before the trial court on 21.01.2025 for cross-examination and shall not take more than one further opportunity for completing rest of its evidence and shall not seek adjournment for evidence on the date so listed, on account of any reason whatsoever.

RAVINDER DUDEJA, J.

JANUARY 20, 2025

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