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

+ **CM(M) 246/2025**

ASHA GAHLOT AND ORSPetitioners

Through: **Mr. Shivam Gupta, Advocate.**

versus

PRAVEEN KUMAR GAHLOT AND ORSRespondents

Through:

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **07.02.2025**

CM APPL. 7391/2025, CM APPL. 7392/2025 (exemptions)

Allowed, subject to all just exceptions.

These applications stand disposed of.

CM(M) 246/2025

1. This is a petition under Article 227 of the Constitution of India challenging the order dated 01.02.2025 passed by learned District Judge-01 (South West), Dwarka Court, Delhi in *CS (DJ/ADJ) No. 916/2018* titled as "*Praveen Kumar Gahlot V s Krishna Devi and Ors.*"
2. Petitioners are the defendants in the Suit for partition and permanent injunction filed by respondent No.1. Petitioners filed their written statement on 01.11.2018.
3. Plaintiff's evidence was closed on 12.05.2023. Since thereafter, the case was listed for Defendant's Evidence ["DE"].
4. Learned Trial Court vide order dated 30.08.2024 closed DE and listed



the matter for final arguments. The order dated 30.08.2024 is extracted below:-

“ Matter is listed for DE. No DW is present as it is stated by Ld counsel for 04,56,7 that mother-in-law of 04 has expired. Ld counsel for plaintiff that D1 (mother-in-law of 04) is real mother of plaintiff and she had expired on 26.8.24.

Perusal of the record shows that on previous date of hearing a cost of Rs. 2000/- was imposed upon defendant because the defendant had already availed 5 effective opportunities to lead its evidence. Today Sh. Prem Kishore Tripathi, ld counsel for 04,5,6,7 has stated that since mother-in-law of 04 has expired on 26.8.24 therefore he seeks an adjournment.

It is to be seen that the mother-in-law of D4 is real mother of plaintiff, however the plaintiff is ready for effective proceeding and apart from that according to Order 17 of CPC party has to be granted only 3 effective opportunity. Today it is the 6th opportunity. The evidence of defendant is hereby closed by Court Order. Previous cost not paid.

At request case is adjourned to **20.09.2024** for final arguments.”

5. Learned counsel appearing for petitioners submits that non-appearance of petitioner No.1 (defendant No.4) on 30.08.2024 was not deliberate but because of the genuine reason i.e., death of mother in law of petitioner No.1 who was residing in the same house and expired just only four days prior to the said date.

6. Petitioners thereafter filed an application for recall of order dated 30.08.2024. However, the said application was dismissed vide impugned order dated 01.02.2025 which is extracted below:-

“ Final arguments were heard and matter is now fixed for orders.

An application under Section 151 CPC seeking recall of order dated 30.08.2024 on behalf of defendants no.4, 5, 6 and 7 is filed.

Arguments heard. Record perused.

It is submitted by Ld. counsel for applicant that the previous counsel has not informed the defendants about the same and he was



engaged only on 21.12.2024.

The perusal of record reveals that vide order dated 30.08.2024 the right of defendant to lead evidence was closed by the court. The present application is filed at belated stage without disclosing any justified ground beyond the control of applicants/defendants. The counsel for the applicants/defendants was regularly appearing before this court and even the applicants/defendants were also present physically on the subsequent dates of hearing. In view of above, there is no justified ground to recall the order dated 30.08.2024. Hence, the present application is **dismissed**.

Be put up for orders on **06.02.2025**.”

7. Learned counsel for the petitioners submits that the previous counsel for petitioners had assured them that he will be filing an application for recall of order dated 30.08.2024, but the same was never filed. It is thus submitted that petitioners should not be allowed to suffer on account of mistake of the previous counsel. It is also submitted by learned counsel that petitioners have a very good case on merits and unless granted an opportunity to lead DE, they would suffer immense prejudice.
8. It is evident from the record that the case was pending for DE since 22.07.2023 and several opportunities were granted to the petitioners to lead its evidence including last opportunity subject to cost of Rs 2,000/-.
9. Notwithstanding the grant of last opportunity, the evidence was not concluded on the next date i.e. 30.08.2024. The argument of petitioner is that she could not lead DE because of death of her mother in law just four days before the date for defendant's evidence.
10. Be that as it may, the perusal of the trial court orders of subsequent dates i.e. 06.11.2024, 25.11.2024 and 06.12.2024 reveal that no sense of urgency was shown by the petitioners in as much as neither any application was filed nor any request was made before the Court to grant an opportunity



for DE, so much so even the final arguments were addressed on 06.12.2024 without any objection. The application for recall of order dated 30.08.2024 was filed before the trial court, while the trial was already over and the case was listed for orders.

11. Passing the burden on the shoulders of the previous counsel would not serve any purpose. The litigants also need to be vigilant about their case and in this case the record reveals that petitioners had been appearing before the Court on subsequent dates i.e., 06.11.2024, 25.11.2024 and 06.12.2024. Thus, they were not ignorant of the court proceedings and cannot claim that they there were misguided by the previous counsel.

12. This court finds no illegality or perversity in the impugned order passed by learned Trial Court. There is no merit in the present petition. The impugned order does not recall for any interference. The petition is dismissed.

RAVINDER DUDEJA, J

FEBRUARY 7, 2025/sk/r