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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **C.R.P. 57/2025 & CM APPL. 10544/2025, CM APPL. 10545/2025, CM APPL. 10546/2025**

SANJAY SETHI

.....Petitioner

Through: Mr. Gautam Malik, Adv.

versus

MAHENDER RAJPAL (SINCE DECEASED THR LRS)
AND ORS

.....Respondent

Through: Mr. Sumit K. Batra, Adv.
for R-3.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
20.02.2025

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CM APPL. 10543/2025 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

C.R.P. 57/2025 & CM APPL. 10544/2025, CM APPL. 10545/2025, CM APPL. 10546/2025

3. The present petition is filed challenging the order dated 10.01.2024, pursuant to which the application filed by the petitioner under Order VII Rule 11 Code of Civil Procedure, 1908 ('CPC') was dismissed in a suit bearing No.9506/2016 filed by Respondent No.1 (since deceased) seeking declaration and mandatory injunction in regard to the suit property being Second and Third Floor (with roof rights) freehold property forming part of property bearing No. J-87, Beriwalla Bagh, Hari Nagar, New Delhi-110064.



4. The suit was filed way back in the year 2016. It is submitted that the petitioner was impleaded subsequently on 19.03.2019 as Defendant No. 2.

5. The petitioner claimed title over the property pursuant to the alleged Will executed in his favour by Smt. Ram Pyari. The plaintiff / Respondent No. 1 had also claimed title over the property on the basis of the documents, that is, GPA, SPA, Affidavit, Possession Letter and Will executed in his favour by Smt. Ram Pyari.

6. The petitioner filed an application under Order VII Rule 11 CPC taking various grounds, including that the plaintiffs do not have Sale Deed in their favour qua the suit property and cannot seek declaration.

7. By way of the amended suit, the Respondent No. 1 had also sought a decree of declaration for declaring the documents in favour of the petitioner as null and void.

8. The learned Trial Court dismissed the application noting that the documents allegedly executed in favour of the plaintiff as well as the petitioner were executed by the same person and the plaintiff is not admitting to the genuineness of the Will in favour of the petitioner. The same would be tested after the evidence is led and cannot be a ground for rejection of the plaint at initial stage.

9. It is pertinent to note that the suit was filed way back in the year, 2016 and the petitioner was also impleaded long back in the year 2019. The petitioner waited for two years and filed an application under Order VII Rule 11 of the CPC in the year 2021, which was ultimately dismissed by the impugned order on 10.01.2024.



10. The present petition is filed with inordinate delay of 308 days. The petitioner has sought to justify the delay contending that the petitioner as well as the learned who was representing him, were suffering from various ailments and the medical conditions of the petitioner as well as his counsel was the reason for delay.

11. On being asked, it is pointed out that the matter has since proceeded and the evidence is being recorded. Without going into the justification as provided by the petitioner for filing the petition belatedly, this Court is of the opinion that the trial, at this stage, ought not to be impeded.

12. The petitioner is at liberty to lead evidence and prove his defence before the learned Trial Court, especially when the matter has been pending before the learned Trial Court from last nine years.

13. The learned Trial Court is requested to expediate the recording of the evidence and disposal of the suit.

14. The petition is dismissed with the aforesaid observations.

15. All pending applications also stand disposed of.

AMIT MAHAJAN, J

FEBRUARY 20, 2025

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