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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 26.03.2025***+ **C.R.P. 90/2025 & CM APPL. 17288/2025****SUDHIR KUMAR**

.....Petitioner

Through: Mr. Prashant Joshi, Adv.

versus

CHAMELI DEVI

.....Respondent

Through:

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed by the Petitioner under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'] seeking to challenge an order dated 08.11.2024 passed by Learned District Judge, North, Rohini Court, Delhi [hereinafter referred to as 'Impugned Order']. By the Impugned Order, an Application under Section 151 of CPC which has been filed on behalf of the Petitioner (Defendant No.4 before the learned Trial Court) seeking to recall orders dated 27.04.2015 and 31.07.2015, has been dismissed.

2. Briefly the facts are that the Respondent [Plaintiff before the learned Trial Court] filed a suit for possession, ejectment and permanent injunction. The suit was initially filed in the High Court in the year 2014, and thereafter, owing to change in the pecuniary jurisdiction, the matter was transferred to the District Court. The suit is presently at the stage of final arguments.

2.1 By an order dated 31.07.2015, the right of the Defendant No. 4 to file written statement was closed by the Registrar (Judicial) of this Court in view



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of the fact that despite service there was no appearance on behalf of the Defendant No. 4.

3. An Application filed under Order I Rule 10(2) read with Section 151 of the CPC dated 15.12.2022 was filed by the Petitioner/Applicant [hereinafter referred to as "Impleadment Application"] seeking impleadment of Petitioner/Defendant No. 4 as a party to the suit. The Impleadment Application was dismissed by order dated 06.05.2024 passed by the learned Trial Court.

4. The challenge in the present Petition is to an order dated 08.11.2024 passed by the learned Trial Court in an Application under Section 151 of the CPC which was filed by the Petitioner/Applicant seeking to recall orders dated 27.04.2015 and 31.07.2015 [hereinafter referred to as the "Application for recall"]].

4.1 The Application for recall sets out that the order passed by this Court should be set aside in view of the fact that the Petitioner/Defendant No.4 had purchased the property from Defendant No.1 on 25.07.2014. Paragraph 11 of the Application under Section 151 of the CPC also sets out that the Application under Order I Rule 10(2) is being filed for impleadment of Defendant No. 4 by the Applicant/Petitioner despite the fact that the Petitioner/Defendant No.4/Mr. Sudhir Kumar was already impleaded as a Defendant by an order dated 03.03.2015 passed by the Joint Registrar (Judicial) of this Court.

5. Subsequently, the Joint Registrar (Judicial) of this Court has recorded in the order of 27.04.2015 that the Petitioner/Defendant No.4 has been served on 21.04.2015 and was granted time to file a written statement.



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Since, none appeared and no written statement was filed thereafter, by an order dated 31.07.2015, the Joint Registrar closed the right of the Applicant/Defendant No.4 to file a written statement.

6. This aspect also finds mention in the order of the learned Trial Court dated 06.05.2024. It is apposite to set out the relevant extract, which is below:

“7. Perusal of record shows that plaintiff had moved application under Order I Rule 10 CPC for impleadment of applicant Mr. Sudhir Kumar as defendant in this case. Vide order dated 03.03.2015, the said application was allowed by the Court thereby impleading Mr. Sudhir Kumar as defendant in this case and summons were ordered to be issued to him. The defendant Mr. Sudhir Kumar was duly served with summons on 21.04.2015. However, the defendant/Mr. Sudhir Kumar had neither appeared nor filed any written statement. Accordingly, vide order dated 31.07.2015, right of defendant no.4 to file the written statement was closed.

8. The applicant has filed the present application on the ground that he had purchased the suit property from defendant no.1 and was not having any knowledge about the pendency of present case before moving the present application.

9. The present case has been filed on 26.09.2014 and the applicant has been duly served with summons as defendant on 21.04.2015, however, he failed to appear nor filed written statement. In these circumstances, it cannot be said by any stretch of imagination that applicant had no knowledge about the pendency of present case. In the present case, both the parties have already led their respective evidence and the case is at the stage of final arguments. It appears that despite having complete knowledge about the pendency of present case, the applicant has filed the present application just to delay the trial in the present case.”

[Emphasis Supplied]

6.1 Clearly, thus the Petitioner/Defendant No.4 was aware of the proceedings of the Court since April, 2015. In spite of the same, the Petitioner/Defendant No.4 chose to file an Application for recall of orders dated 27.04.2015 & 31.07.2015 before the learned Trial Court on



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05.06.2024 with the following prayers:

"I. Allow the application for recalling the order dated 27.04.2015 and 31.07.2015 passed by this Hon'ble Court on behalf of Defendant No.4;

*II. Direct the plaintiff to provide the complete set of plant [sic: **plaint**] along with all the documents attached with the plant [sic: **plaint**];*

III. Allow the Applicant/Defendant No.4 to file his written statement to bring the correct factual situation before the Hon'ble Court in order to assist this Hon'ble Court for adjudicating the suit to its finality:

IV. Pass such other order as may be deemed fit and proper in the facts and circumstances of the instant case;"

7. It is the case of the Petitioner that the Petitioner had purchased the suit property on 25.07.2014 and has been in possession of the property since that date. However, in support of this purchase, the Petitioner has failed to place on record any sale deed or other such documents. The Petitioner only seeks to rely upon on an electricity bill which has been annexed along with the Petition.

7.1 The contentions that are set out by the Petitioner in the Application for recall are that the service was not effected on the Petitioner, it was effected on his tenant who was residing therein and that the tenant never informed him about the summons. The Application for recall then sets out that some police officer came on 20.11.2022 to his premises and it is then that he found out about the present civil suit. The Application for recall also sets out that there is no delay in filing the present Application despite the fact that as per the Application itself, the Application for recall has been filed in June, 2024, while the date of knowledge is November, 2022.

8. The learned Trial Court examined the Application for recall and found that the Application was devoid of any merit in view of the fact that



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previously, the Petitioner had filed an Application for impleadment under Order I Rule 10 of CPC which was dismissed on 06.05.2024 and the challenge seeking recall of orders was not raised therein. The learned Trial Court has also given a finding that for the Petitioner to submit that he was not aware of the orders dated 27.04.2015 and 31.07.2015 cannot possibly be correct, since an Impleadment Application was filed by the Petitioner previously. Thus the learned Trial Court has disallowed the Impleadment Application. It is apposite to extract paragraphs of the Impugned Order in this behalf, which is reproduced below:

“ ...

6. *At the outset, it is pertinent to mention here that vide order **dated 06.05.2024, application of defendant no.4 i.e. applicant herein filed under Order I Rule 10 CPC for impleadment had been dismissed and in the said application under Order I Rule 10 CPC, no such ground of the premises being in possession of tenant, was taken by the defendant no.4.** The application in hand has been filed on dated 05.06.2024 wherein for the first time, the defendant no.4 had taken the ground of premises/his address being in possession of tenant resulting into non-service of summons upon him.*

7. *It is contended on behalf of the defendant no.4 in the present application that while arguing his application under Order I Rule 10 CPC on 06.05.2024, he came to now about the impugned order dated 27.04.2015 and 31.07.2015. Surprisingly, what stopped the defendant no.4 to wait till 05.06.2024 for moving the present application. It is further very surprising that at the time of moving application under Order I Rule 10 CPC, defendant no.4 was not aware about the impugned orders since without inspection of the complete file and facts on record, the said application Order I Ruel 10 could not have been filed.*

8. ***From the facts and circumstances of the case, it appears that when defendant no.4 could not succeed by moving an application under Order I Rule 10 CPC, he filed the present application by taking different ground of premises being under possession of tenant which was neither taken nor argued at the time of disposal of application under Order I Rule 10 CPC.***”

[Emphasis supplied]

8.1 Clearly, the learned Trial Court lost sight of the fact that an



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Application for Impleadment had previously been filed by the Respondent/Plaintiff being I.A. No.4383/2015 and by an order dated 03.03.2015, the Petitioner/Defendant No.4 was already impleaded as a party to the present suit, and thus, did not require to be impleaded again.

9. Undisputably, the suit was filed in the year 2014 by the Respondent/Plaintiff against the Petitioner/Defendant No.4 and three others. A perusal of the orders in suit shows that the suit is being contested by Defendant Nos.1, 2 and 3 from the beginning itself and that the matter is at the stage of final arguments. The Petitioner/Defendant No.4 has failed to set out any reason for the fact as to why the Application has been filed belatedly. Even assuming that the Petitioner/Defendant No.4 had no knowledge in the year 2015, the knowledge was gained by him in November, 2022 but no application was filed till June, 2024. The Application for recall also sets out various pending *inter se* litigations between the parties which includes Complaint Case No. 139/2019 captioned “*Babu Lal v SI Shrawan Singh*” pending before Ld. ASJ, North-West District, Rohini Court filed in the year 2019.

10. In addition, clearly the Petitioner has concealed both from this Court and the learned Trial Court that he was already impleaded as a party to the Plaint as Defendant No.4 in the year 2015. It is settled law that he who conceals fact is not entitled to any relief from the Court. In addition, and as is stated above, the Petitioner has failed to place on record any document evidencing his title to the suit property. The Application for recall was filed belatedly and is bereft of reasons for the delay and does not merit consideration by the Court.



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11. In view of the foregoing circumstances, this Court is not inclined to interfere with the Impugned Order.

12. The present Petition is accordingly dismissed. The pending Application stands closed.

13. However, liberty is granted to the Petitioner to take appropriate steps in accordance with law, in respect of the contentions raised in the present case.

14. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

MARCH 26, 2025/jn/ ha/r

[Click here to check corrigendum, if any](#)