



2025:DHC:7738



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* IN THE HIGH COURT OF DELHI AT NEW DELHI
% Date of Decision: 02nd September, 2025

+ CM(M) 405/2025

BRIJ BALA PASSI

.....Petitioner

Through: Mr. Shirish Yaduvashi, Advocate.

versus

RAMESH PASSI AND OTHERS

.....Respondent

Through: Mr. Sahil Sharma, Advocate for R-1
and R-6.**CORAM:****HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)****CM APPL. 55228/2025 (exemption)**

Exemption allowed, subject to all just exceptions.

CM APPL. 55227/2025(stay)

1. Petitioner is plaintiff before the learned Trial Court.
2. The suit was dismissed for *non-prosecution* on 22.08.2024.
3. Such order is under challenge.
4. By virtue of the abovesaid application, the petitioner seeks a direction to her adversary to stop all construction activities going on in the suit property.
5. Since the suit, as on date, is lying dismissed, it will not be appropriate for this Court to entertain the abovesaid application.
6. However, since a very short point is involved, the matter has been taken up today itself.
7. The application stands disposed of in aforesaid terms.

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8. The plaintiff has filed a suit seeking declaration and injunction.



9. When the case was at the initial stage and the issues had yet not been framed, learned Trial Court, on 22.08.2024, passed following order: -

“Present : Plaintiff has joined through VC.

Sh. Rakesh Wadhwa, Ld . counsel for defendant no. 1 and 2 Sh. Manish Gandhi, Ld. counsel for defendant no. 7 namely, Sh. Dalbir

It is submitted by plaintiff that she is out of India and no new counsel has been engaged till date. It is further submitted that she will be returning in the month end of November and accordingly is seeking time to engage a counsel.

On the last date of hearing, i.e. on 09.07.2024, plaintiff was directed specifically to argue the pending applications. It is not expected from the plaintiff that by her own conduct the matter will be delayed. The plaintiff is asking time till November, however when the case was filed the plaintiff also comes with the bounden duty to assist the Court in the timely disposal of the case. Since the plaintiff herself trying to delay the proceedings in the present case, this Court is of the opinion that the present case shall be disposed of for non-prosecution.

Accordingly, the present suit stands dismissed for non-prosecution and for non -compliance of last Order.”

10. It is quite clear that on that day, the matter was fixed for arguments on pending applications and, even if, the plaintiff was requesting for short accommodation as she was out of country, the learned Trial Court, at best, could have disposed of the pending applications on merits but there was, actually speaking, no point in dismissing the suit *in toto* for *non-prosecution*.

11. Moreover, since the plaintiff had made a specific request and was out of India and had not been able to engage any counsel, instead of dismissing the suit for *non-prosecution*, the Court could have granted her some adjournment, *albeit*, subject to certain cost or conditions.

12. Mr. Sahil Sharma, learned counsel for respondent No. 1 and 6 is also present.

13. Fact remains, the aspect of dismissal of the suit for *non-prosecution* is,



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primarily, between the plaintiff and the learned Trial Court and, as already noticed above, it was not appropriate for the learned Trial Court to have dismissed the entire suit for *non-persecution*, merely, because plaintiff could not render due assistance to the Court for the purposes of disposal of pending applications.

14. The pending application filed by her was under Order XXXIX Rule 1 and 2 CPC and, there was one more application filed by Mr. Dalbir Singh under Order I Rule 10 CPC who wanted his impleadment in the ongoing suit. The Court could have decided those applications on the basis of material available in the record, instead of dismissing the suit for *non-prosecution*.

15. Resultantly, the present petition is allowed and the suit in question is directed to be restored to its original number and position and parties shall appear before learned Trial Court/Successor Court on 20.09.2025.

16. However, for causing delay, the petitioner is burdened with cost of Rs. 25,000/- which shall be payable, in equal proportion to the defendants, on 20.09.2025.

17. Petition is disposed of in aforesaid terms.

18. The next date of hearing i.e. 04.12.2025 stands cancelled.

(MANOJ JAIN)
JUDGE

SEPTEMBER 2, 2025/sw/PB