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Jagjit Singh Saini Vs. Smita

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Court : Delhi

Decided On : Mar-05-2013

Judge : Veena Birbal

Appellant : Jagjit Singh Saini

Respondent : Smita

Judgement :
$~ 43 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CM(M) 259/2013 % Date of decision: March 5, 2013 JAGJIT SINGH SAINI ..... Petitioner Through: Mr.M.Qayam-Ud-Din, Adv. versus SMITA ..... Respondent Through: None. CORAM: HON'BLE MS. JUSTICE VEENA BIRBAL VEENA BIRBAL, J.(Oral) % CM No.3879/2013 Allowed, subject to just exceptions. CM(M) 259/2013 1. By way of this petition under Article 227 of the Constitution of India, petitioner has challenged the order dated 11th January, 2013 passed by the Ld. Additional District Judge(N), Tis Hazari, Delhi whereby the Misc.Civil Appeal no.7/2012 filed by the respondent herein i.e., defendant before the trial court, has been allowed and the ex parte order dated 3rd March, 2012 passed by the learned Civil Judge dismissing her application under order 9 Rule 7 CPC has been set aside.

2. The petitioner herein is a plaintiff before the learned trial court and has filed a suit for possession and mesne profits against respondent i.e., defendant before the trial court on 29th May, 2008 wherein the respondent/defendant was proceeded ex parte vide order dated 13 th October, 2009. On 11th January, 2010, respondent/defendant had appeared before the Ld.trial court and has filed an

application for inspection, restoration etc. Thereafter, she stopped appearing and again on 30th October, 2010 she appeared through Legal Aid Counsel. It is stated that on 22 nd March, 2011, ex parte evidence of petitioner/plaintiff was recorded. It is further stated that on the said date, respondent/defendant filed power of attorney and thereafter had moved an application under Order 32 Rule 3 CPC through her counsel but the same was snatched by the respondent from the court record and ultimately she had tendered unconditional apology before the court. It is further stated that on 1st October, 2011, an application under Order 9 rule 7 CPC was filed and the said application was dismissed by the trial court on 3rd March, 2012. Aggrieved with the said order, respondent/defendant had filed an appeal before the Ld. Additional District Judge. After hearing both the parties, Ld. Additional District Judge had set aside the impugned order in the interest of justice, subject to costs of ` 5000/- and has given respondent/defendant one opportunity to file written statement, one opportunity to cross-examine the petitioner/plaintiffs witness and one opportunity to lead her evidence. Aggrieved with the same, present petition is filed.

3. Learned counsel for the petitioner/plaintiff has contended that the Ld. Additional District Judge has dealt with the matter in a casual manner. The application of the respondent/defendant under Order 9 Rule 7 CPC was time barred and the conduct of the respondent/defendant before the trial court was not proper. In these circumstances, the Ld. Additional District Judge ought not have given her opportunity as is given in the impugned order.

4. I have considered the submissions made and gone through the material on record.

5. The case of the respondent/defendant is that in June, 2006, she was forcibly evicted from the suit premises by the petitioner/plaintiff. She has also made allegations that she was given beatings by the petitioner/plaintiff and his family members action was taken. and she lodged a complaint to the SHO but no She has also made allegations to the effect that petitioner/plaintiff has stolen her household articles worth more than ` 5 lakhs after unlocking her premises, as such, she be allowed to participate in the suit. Respondent/defendant has also

alleged that she has no means to pursue the matter and had to approach the legal aid. Considering the above background, in the interest of justice, one more opportunity has been granted to her to prove her case. The liberty given vide impugned order is as under:Thus, in the interest of justice subject to cost of Rs.5000/- order dated 03/03/2012 is modified to the extent that appellant shall be entitled to only one opportunity to file written statement, one opportunity to cross-examine plaintiffs witness and one opportunity to cross-examine plaintiffs witness and one opportunity to lead her entire evidence. Trial court record alongwith copy of order be sent back. Appeal file be consigned to Record Room.

6. The Ld.Additional District Judge while disposing of the appeal has considered the delay aspect as well as her conduct. If the opportunity as is given by Ld.Additional District Judge is not given to her, in that event, respondent/defendant would be seriously prejudiced inasmuch as she will not be able to put forth her defence. By giving the opportunity only some delay is caused and the matter and for that Ld.Additional District Judge has compensated the petitioner/plaintiff with costs.

7. In these circumstances, considering the totality of the facts and circumstances of the case, no illegality is seen in the impugned which calls for interference of this court under Article 227 of the Constitution of India. Present petition stands dismissed. No costs. CM No.3878/2013 (stay) In view of above order, no further orders are required on this application. The same stands dismissed as infructuous. VEENA BIRBAL, J MARCH 05 2013 ssb

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