

(2013) 05 DEL CK 0230

Delhi High Court

Case No: CM (M) 995 of 2012

Virender Malik

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision: May 21, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: Isha Khana and Ms. Nidhai Raman, for the Appellant; Namrata Singh, for R-1 to R-4, Mr. Parvinder Chauhan, for R-5 and R-6 and Mr. Robin R. David, for R-7, for the Respondent

Final Decision: Dismissed

Judgement

Indermeet Kaur, J.

Petitioner is aggrieved by the two orders; first is dated 02.02.2012 and the subsequent order dated 22.3.2012. The order dated 22.3.2012 had dismissed the application filed by the petitioner under Order XLVII of the CPC (hereinafter referred to as the Code) seeking review of its earlier order dated 02.02.2011. Vide order dated 02.02.2011 the application filed by the petitioner seeking amendment of the plaint had been declined. Record shows that this case is a chequered history; it was initially filed as a suit for declaration, cancellation of documents dated 15.03.2007 as also claiming relief of possession and permanent injunction. The court had noted that the suit has been under-valued and deficient court fee was directed to be paid up. This order was reiterated on 25.7.2011, 20.9.2011, 24.11.2011, 21.01.2012 and since court fee was not paid, on 02.02.2012 the CM(M) 995/2012 Page 1 of 3 plaint was rejected. On this date the application filed by the petitioner under Order VI Rule 17 of the Code seeking amendment of the plaint had also been considered. This application came to be filed by the petitioner at the time when the petitioner, found that it was unable to pay up deficient court fee and by way of this application he

sought permission of the court to give up the relief of possession. However, the record shows that the adequate court fee had also not been affixed on the prayer for declaration. This has been noted in the subsequent impugned order dated 23.02.2012 which had taken up the review petition seeking review of the order dated 02.02.2012. The impugned order dismissing the review petition has also noted that the sale deed of which cancellation has been sought is dated 15.3.2007 and the suit of the plaintiff appears prima facie time barred.

2. Counsel for the petitioner is aggrieved by the aforementioned finding. Her submission is that although admittedly opportunity had been granted to her to pay up deficient court fee but because of financial constraint and dire financial conditions the petitioner could not gather sufficient money to pay up the money. He has also been taking assistance of the legal aid. It was only in these circumstances that he was constrained to move the aforementioned application under Order VI Rule 17 of the Code seeking permission of the court to give up his relief of possession. Attention has been drawn to the order dated 02.02.2012 wherein it has wrongly be noted that the plaintiff was seeking a relief of possession; in fact by way of this application, the plaintiff/petitioner had sought permission to give up the relief of possession.

3. Attention has also been drawn to the averments made in the plaint wherein in para 47 cause of action has been detailed, it has been pointed out that on 03.3.2008 the plaintiff received a letter from defendant no. 2 about the registration of the sale deed. Thus it is clear that even as per the case of the petitioner on 03.3.2008 the plaintiff was well aware about the registration of the sale deed of which now cancellation has been sought by filing the present plaint which has been filed in April 2011. The impugned order has correctly noted that the claim of the plaintiff is time barred. This trial would in fact be an exercise in futility.

4. Apart from the fact that this petition has been vehemently opposed by the other contesting defendants, record shows that already enough opportunity has been granted to the petitioner to comply with its directions for payment of deficient court fee. It is not the stand of the petitioner that his financial condition has now improved. If he could not have paid the court fee earlier how he would be in a position to pay the court fee at this stage has also not been explained. In this background the review petition dismissing the relief seeking review of the order dated 02.02.2012 vide which the petitioner had sought an amendment in the plaint when record shows that enough opportunity had already been granted to the petitioner to pay up court fee and the petitioner has also taken adjournments for the said purpose. The impugned order suffers from no infirmity. Dismissed. Trial court record be sent back.