

**IN THE COURT OF SH. RAMESH KUMAR-II,
ADDITIONAL DISTRICT JUDGE-01, SHAHDARA
DISTRICT, KARKARDOOMA COURTS,
DELHI**

CS No. 264/20

In the matter of:-

Smt. Anita Chawla

.....Plaintiff

Vs.

Smt. Shalu Chawla & Ors.

.....Defendants

19.10.2022

ORDER

Vide this order I shall dispose off the application of the defendant no.1 under Order 47 read with Section 114 and 151 CPC for recalling of order dated 05.11.2020.

Brief facts as stated by the defendant no.1 in the present application are that the defendant no.1 has come to know that the plaintiff has mislead the court by concealing and misrepresenting the material facts with the motive to summon the defendants without paying the proper court fees of Rs.63,000/- i.e. Rs.53,000/- on gift deed and Rs.10,000/- on rent agreement approximately. It is further averred that the plaintiff is well aware that she is only in possession of 50 sq. yds. portion out of 100 sq. yds. of the suit property and the same is also evidence from the stay order dated 05.02.2020 passed by the court of Ms.

Aditi Garg, the then Ld. ASCJ, Shahdara, KKD, Delhi in case titled as “Shalu Chawla Vs. Dharmender Kumar Chawla & Anr., in case bearing no.1511/2019. It is further averred that after filing of the present suit, the court kept the matter for consideration and then instead of proper valuation and paying the requisite court fee, the plaintiff mischievously filed amendment application for obtaining the summoning order against the defendants. It is further averred that the plaintiff has also mislead the court by submitting that the proposed amendment will not change the nature of the suit and no prejudice would be caused to the defendants if the present application was allowed, however after going through the contents of the amended plaint the defendant no.1 came to know that a grave prejudice has been caused to the defendants as the defendant no.1 and 2 are in lawful and settled possession of the suit property measuring 50 sq. yds. From Grond Floor to Top Floor and hence, the amendment application of the plaintiff should not have been allowed in above circumstances. It is further averred that if the order dated 05.11.2020 is not reviewed and modified by this court, then it will cause grave prejudice to the defendants and will also affect the merits of the case. Therefore, it is prayed to recall/review and modify the order dated 05.11.2020.

Reply to this application has been filed on behalf of plaintiff, stating therein that the present application is not maintainable in law as the same ha been file only to delay the proceedings and the plaintiff has filed the present suit on her cause of action as mentioned in the suit and the court after hearing preliminary submission has issued the summons to the

defendants and it is very surprising that instead of contesting the said suit on merits the defendant no.1 has filed the present application which deserves dismissal on the face of it.

Both the parties have filed written submissions in support of their respective stands.

I have perused the written submissions filed on behalf of both the parties and also perused the record.

The legal principles with regard to review are well settled and have been culled out by the Superior Courts in plethora of cases. The Apex Court in Kamlesh Verma Vs. Mayawati (2013) 8 SCC 320 held that a review will be maintainable on the following grounds:

(a) on discovery of new and important matter or evidence which, after the exercise of due diligence was not within knowledge of the petitioner or could not be produced by him;

(b) mistake or error apparent on the face of the record, and

(c) any other sufficient reason.

Review will not be maintainable on the following grounds:

a) repetition of old and over ruled argument is not enough to reopen concluded adjudication;

(b) minor mistakes of inconsequential import;

(c) review proceedings cannot be equated with the original hearing of the case;

(d) review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice;

(e) review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error;

(f) the mere possibility of two views on the subject cannot be a ground for review;

(g) the error apparent on the face of the record should not be an error which has to be fished out and searched;

(h) the appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition, and

(i) review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.

The defendant is aggrieved by the order dated 05.11.2020 whereby my Ld. Predecessor after hearing submissions on application of plaintiff under Order 6 Rule 17 CPC, allowed the said application and amended plaint was taken on record. Thereafter summons of suit and notice of the application under Order 39 Rule 1 and 2 CPC was issued to the defendants.

It is settled law that an erroneous view or erroneous judgment is not a ground for review. A perusal of record reveals that no adverse order has been passed against the defendant no.1 while passing order dated 05.11.2020. Even otherwise the defendant no.1 & 2 have taken a specific objection with regard to court fees in their written statement and issue to that effect can be framed in respect thereof and then only the court would be in a position to conclusively determine the real controversy between the parties. Hence, this court of the view that there is no merit in the present application of the defendant no.1 as the grounds or facts mentioned in the application do not attract provisions of Order 47 of the Code because the defendant no.1 has failed to mention in the application any error or mistake which is apparent on the face of the record nor any other irregularity with the order dated 05.11.2020. The present application has been filed with sole motive to delay the proceedings. Defendant no.1 is hereby restrained from filing such kind of vague application, otherwise cost shall be imposed upon them.

In the light of above observations and discussion, the

present review application moved on behalf of defendant no.1 is hereby dismissed.

Application is disposed of accordingly.

(Typed to the dictation directly, corrected and pronounced in open court on 19.10.2023)

**(RAMESH KUMAR-II)
ADJ-01/SHD/KKD COURTS
DELHI**