

7CS112/21LAL JI ORS Vs. M/S
DUREJA AGENCIES AND ORS

23.11.2024

Present : None on call at 10.22am.

An application along with certain Annexures, moved by the plaintiffs, under Section 151 CPC, is pending adjudication, seeking recalling of the Order, dated 05.02.2024, thereby imposing the costs of Rs.1000/-, to be paid to the defendant on the next date and further Order, dated 22.04.2024, (incorrectly mentioned as 24.04.2024).

Sh. Manoj Kumar, Ld. Counsel for the defendants has submitted that he does not want to submit any formal reply to the application and argued straightaway thereupon.

Sh. Sudhir Sharma, Ld. Counsel for the plaintiffs had stated that the plaintiff No.1 is an aged person of 82 years of age and having so many diseases to cope with and he earnestly pleaded for waiver of the costs of Rs.1000/-. He further argued that the copy of the affidavit, of PW Sh. Lal Ji, shows that the same was prepared and verified on 08.07.2022, but was not filed before the Court by the Ld. Legal Aid Counsel, Sh. Satish Sharma, representing the plaintiffs, at that time. He, however, accepted that the plaintiffs have not taken any action against the earlier Counsel before any relevant Fora. He has also drawn my attention to the page no.13 of the Annexures, which is alleged to be a copy of the diary of earlier Counsel Sh. Satish Sharma and his submission was that, though, the application was prepared by the earlier Counsel, but he did not file the same before the Court for recalling of the Order, dated 22.04.2024 and therefore, the plaintiffs

complained before the Ld. Secretary, DLSA, East, for return of their briefs.

On the other hand, Sh. Kumar had submitted that the Court has, been, very lenient with the plaintiffs and the matter was initially fixed for recording the evidence of the plaintiffs on 08.07.2022 and due to neglect of the plaintiffs in prosecuting the case, PE in the matter was closed on 07.10.2022 and even the plaintiffs were aware on that day also that the copies were lying with the Ld. Earlier Counsel but the plaintiffs did not bother to take corrective measures, as now, being claimed by them. He further submitted that even, vide Order, dated 03.02.2023, the earlier application moved, was allowed, subject to costs of Rs.500/-, while fixing the matter for leading PE and even thereafter, on 31.10.2023, the affidavit of PW1 Sh. Lal Ji was tendered in evidence and further examination-in-chief was deferred on the request of the Ld. Counsel, Sh. Satish Sharma. He also submitted that even, on the next date, i.e., 05.02.2024, adjournment was sought by the plaintiffs on the ground that certain certified copies had to be obtained and adjournment was allowed subject to costs of Rs.1000/-. He, however, submitted that even, costs have not been paid till date and in this scenario of the matter, PE came to be closed vide Order, dated 22.04.2024. He also submitted that the documents, now, sought to be relied on, as Annexures, are manipulated documents.

In rebuttal, Sh. Sharma stated that the plaintiffs had applied for obtaining certified copies but the copies were delivered, lately, and were prepared, only, on 05.02.2024. He further submitted that the plaintiffs cannot pay the costs, as they are under financial distress and even the Counsel is conducting the case pro bono.

I have heard Ld. Counsels for the parties and carefully, perused the record and keeping in view the overall facts and circumstances of the case, as discussed herein-above, including the age of the plaintiffs, also reasons, so cited by Ld. Counsel for the plaintiffs, this Court is of the considered view that one opportunity should be granted to the plaintiffs for leading PE. Accordingly, in the interest of justice, the application stands allowed and one last and final opportunity is granted to the plaintiffs for leading PE, in the matter, however, subject to payment of previous costs of Rs.1000/- imposed vide Order, dated 05.02.2024. The Order, dated 22.04.2024 shall be recalled only on the payment of the above costs, which is a condition precedent.

Put up on **24.03.2025** for payment of costs, also for leading entire PE, in the matter, as last & final opportunity. Advance copies of the affidavits of PWs be supplied, immediately, to the other side, against receipt. PWs shall be present.

(Sanatan Prasad)
District Judge-02 (East)
Karkardooma Courts/Delhi/23.11.2024