

30.01.2025

Present : Mr. Pratyush Jain, Ld. Counsel for the plaintiff  
alongwith plaintiff in person.  
Mr. Rahul Gaur, Ld. Proxy Counsel for the  
defendant through VC.

Ld. Proxy Counsel for the defendant requests for an adjournment on the ground that Ld. Counsel for the defendant had applied for certified copy of the record of this case, but has not yet been provided with copy of the application of the defendant under Section 151 CPC which is listed for arguments today.

He submits that the defendant has changed his Counsel and Mr. Ashutosh Upadhyay is his new Counsel.

He states that the new Counsel does not have copy of the application under Section 151 CPC and therefore, is unable to address arguments on same today.

Request for adjournment is opposed.

It is submitted that the matter is being adjourned repeatedly because of the defendant.

Record is perused.

Matter has already been adjourned due to the defendant on many dates. Request for adjournment is declined.

The application of the defendant under Section 151 CPC for setting aside of order dated 24.02.2023 is taken up for consideration.

On 24.02.2023, the Ld. Predecessor of the Court noted that written statement has not been filed by the defendant despite repeated opportunities.

He noted the submission of the Ld. legal-aid Counsel who was representing the defendant that he had met sons of the defendant, who failed to give him any instructions for drafting the written statement.

It was further noted that even the defendant has not given any instructions to the legal-aid Counsel due to which written statement could not be filed.

The Ld. Predecessor of the Court accordingly struck off the defence of the defendant.

On the said date, the defendant was produced before the Court from judicial custody.

Reply to the application has been filed. It is submitted by the Ld. Counsel for the plaintiff that the defendant was giving instructions to his advocate regarding his case which was pending before the Hon'ble High Court. In support of this submission, he has filed copy of order dated 10.08.2023 passed by the Hon'ble High Court in a case filed by the defendant herein.

He also submits that the relief sought in the application cannot be granted by filing of an application under Section 151 CPC before this Court. He states that the defendant should have assailed the order dated 24.02.2023 before a superior Court.

Arguments have been heard and the record has been perused.

It is settled law that mentioning of an incorrect provision of law in an application does not disentitle the applicant to the relief sought if he is otherwise entitled to it.

This Court has powers of review and recall its order by which the defense of the defendant has been struck off. Therefore, the relief sought by the defendant in his application under Section 151 CPC can be granted by this Court.

It is not in dispute that the defendant was in judicial custody. The matter of the defendant which was pending before the Hon'ble High Court was for suspension of his sentence.

The Court does not agree with the submissions of the Ld. Counsel for the plaintiff that if the defendant could give instructions to his Counsel in the criminal case, then he should have also give an instruction to his counsel in the present case so that written statement could be prepared.

The Counsel whose appearance has been marked in the order of the Hon'ble High Court appears to be a Counsel appointed through the Legal Service Authority.

The advocates appointed through Legal Service Authority in criminal cases routinely visit jails for obtaining instructions from their clients. However, the legal-aid Counsels in civil cases usually do not make such visits.

Also, applications for suspension of sentence drafted by legal-aid Counsels usually in a fixed format and language for which not much instructions are required from the inmate. On the other hand, for preparation of written statement, elaborate instructions and all necessary documents are required.

Since the defendant was in judicial custody during the time when he was required to file written statement, this Court is inclined to take a lenient view.

Application under Section 151 CPC for setting aside of order dated 24.02.2023 is accordingly allowed.

Ld. Proxy Counsel for the defendant submits that the Ld. Main Counsel for the defendant now has complete and legible copy of the plaint and accompanying documents.

Let written statement be filed within 30 days from today after supplying advance copy to the Ld. Counsel for the plaintiff.

Let replication be filed within 30 days from receiving copy of the written statement after supplying advance copy to the Ld. Counsel for the defendant.

Let affidavits of admission and denial of documents and proposed issues be filed by the next date of hearing after supplying advance copy to the opposite party atleast seven days prior to the next date of hearing.

To come up for framing of issues on 04.04.2025.

(Shirish Aggarwal)  
District Judge-03  
Patiala House Courts, New Delhi  
30.01.2025