

22.09.2023

Present: Sh. Abhishek Kumar, ld. Counsel for plaintiff along with plaintiff.  
Defendant no.1 expired.  
Sh. Ikrar Siddiqui, ld. Counsel for defendant no.2 and 3.

Ld. counsel for plaintiff submits that since defendant no. 1 expired and it was a case for personal wrong allegedly committed by defendant no.1 and such he is withdrawing the application under Order XXII Rule 4 CPC moved for substitution of LRs of defendant no. 1. Separate statement of ld. Counsel for plaintiff recorded. In view of the same, the application under Oder XXII Rule 4 CPC is dismissed as withdrawn. Name of defendant no. 1 deleted from array of parties.

An application under Order VIII Rule 10 r/w Section 151 CPC moved on behalf of plaintiff is pending. It is mentioned in the application that vide order dated 28.11.2022 the defendant no. 2 and 3 were directed to file the written statement within four weeks but the written statement was filed with huge delay of 150 days and as such the plaintiff is entitled to decree under Order VIII Rule 10 r/w Section 151 CPC.

Reply to the present application not filed. Opportunity to file the reply is closed.

Heard Submissions of both the parties.

Vide order dated 16.02.2023, ld. Predecessor of this court took the written statement of defendant no. 2 and 3 on record without any adverse order and in these circumstances the application under Order VIII Rule 10 r/w Section 151 CPC is not maintainable. Moreover, considering the facts of the present case, there cannot be any decree straightaway since

the germane case vide FIR no. 286/2018, PS New Usmanpur is pending before the court of Ld. Principal District & Sessions Judge, North East District and the plaintiff herein is required to prove his case by leading affirmative evidences. There is no ground for decreeing the case of the plaintiff at this stage.

In view of the same, the application under Order VIII Rule 10 r/w Section 151 CPC is dismissed.

Replication, if any, be filed within two weeks with an advance copy to the opposite party.

Put up for completion of pleadings/admission/denial of documents and framing of issues on 27.10.2023.

(KAPIL KUMAR)  
ADJ-01/NE/KKD/DELHI  
22.09.2023

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