

03.05.2024

Present: Sh. Rajeev Gupta, ld. counsel for plaintiff along with the son of plaintiff.

Sh. C. Prakash, ld. counsel for defendants.

An application under Order VIII Rule 1 r/w section 151 CPC moved on behalf of defendants through e-filing for recalling the order dated 02.05.2023 and to take the written statement of the defendants on record. The present application is annexed with the written statement of defendants along with reply to the application under Order XXXIX Rule 1 & 2 CPC and several documents. Copies supplied. Ld. Counsel for plaintiff submits that he does not wish to file reply of the present application and will straight away argue on the application.

It is stated in the application that the defendants were served with the summons of the suit and thereafter they engaged one counsel namely Sh. Rishabh Kashyap who assured the defendants that he will take care of the case. It is stated that the defendants were not keeping well and they were not well versed of the legal process and as such they relied upon the advice of previous counsel.

It is stated that for last 2-3 months the defendants were continuously calling the previous advocate to know the status of case but they did not receive any response. It is stated that the defendants came to know that the previous counsel was suffering from high blood pressure, severe chest pain for which he is undergoing several medical investigations in Max Hospital, Saket.

It is stated that the previous counsel did not file the written statement and not pursued the case diligently. It is further stated that defendant no. 1 is 78 years old lady for which the necessary steps could not be taken. It was prayed that the order dated 02.05.2022 be set aside and the written statement of the defendants be taken on record.

Ld. Counsel for plaintiff submitted that the present application is not maintainable since the order vide which the opportunity of the defendants to file the pleadings was closed has not been challenged till date. It is submitted that the present application is a method to delay the suit which is at the stage of ex-parte final arguments.

I have heard arguments advanced by ld. counsels for both the parties and carefully perused the record.

This is a suit for the relief of possession, permanent and mandatory injunction, mesne profits etc filed by the plaintiff by declaring herself to be the owner of suit property by virtue of a registered GPA dated 24.01.2006. It is stated in the plaint that the defendants filed a false suit for permanent and mandatory injunction bearing civil suit no.164/2008 before the court of Ld. Civil Judge where the defendants obtained restraining order against husband of plaintiff to not to do any obstruction in the suit property. It is further stated that the defendants took forcible possession of suit property on 01.04.2012.

It is true that the defendants did not pursue the present

case diligently for which the right of the defendants to file the written statement was closed on 02.05.2023 and the matter was fixed for PE. Three witnesses were examined on behalf of plaintiff but none of the witness were cross-examined on behalf of the defendants.

The present application is annexed with the affidavits of the defendants which mention in detail about the alleged bad health of the previous counsel. The parties should not suffer for any kind of lapse on the part of previous counsel.

Further, no such prejudice would be caused to the plaintiff if the written statement of defendants be taken on record which could not be compensated by way of cost. Moreover, if the written statement of defendants be taken on record then the matter would be decided on merits and there would be final adjudication of *lis* between the parties. Accordingly, the present application is allowed and the written statement of the defendants is taken on record, but considering the delay in filing the present application and the previous conduct of defendants, a cost of Rs.10,000/- is imposed upon the defendants to be paid to the plaintiff on NDOH.

Let the replication if any be filed within 14 days with advance copy to the opposite party. Put up for completion of pleadings/admission-denial of documents/arguments on interim application/framing of issues on 02.07.2024.

(KAPIL KUMAR)
ADJ-01/NE/KKD/DELHI
03.05.2024 sb