

Misc DJ No. 88/19

Pardeep Rana (since deceased) through LRs vs Ravi Kundu and ors.

10.08.2020

The matter has been taken up through video conferencing via Cisco Webex.

Today the file is taken up on an application for preponement of date of hearing of the application u/o 39 R 1&2 CPC and the application seeking urgent hearing of the same, moved on behalf of applicant Sudesh.

Present: Sh. Kuldeep Balhara, Advocate, counsel for the applicant.

Heard. The application for urgent hearing is allowed.

Regarding the application for preponement of date of hearing, counsel for the applicant pleaded that during the pendency of the application u/o 22 R 9 CPC, the defendants no.1,3 & 4/non-applicants have sold the subject property to one Joginder vide sale deed dated 13.11.2019. Now, instead of Joginder, the defendants no.1,3 & 4 are trying to take the forcible possession of the suit property from the applicant. Hence, the date of hearing of the application u/o 39 R 1&2 CPC may be preponed.

During the course of the arguments, counsel for the applicant pleaded that date of hearing may also be preponed for application u/o 22 R 9 CPC r/w Order 23 R 3 and 3A r/w Sec. 151 CPC.

Brief facts relevant for disposal of the present application are that Pradeep Rana (deceased/plaintiff) filed the suit against the defendants including the defendants no.1 to 4/non-applicants herein i.e. suit no. 57737/16. During the pendency of the said suit, on 16.12.2014, the plaintiff expired. Subsequently, LRs of the deceased plaintiff i.e. his mother Indra

Contd.....2/-

: 2 :

Devi and his wife Suman moved applications for their impleadment as LR's of deceased. The said application was allowed on 05.10.2015. Subsequently, the matter was referred to Mediation Cell for dissolution of dispute. Perusal of the mediation settlement dated 28.08.2017 reveals that the dispute were settled between Suman Rana and the defendants no.1 to 4 and in those proceedings, D-2 appeared for himself and as attorney for the defendants no.1,3 & 4. Consequently, vide order dated 31.08.2017, the plaintiff withdrew the suit. As such, the suit was disposed off as withdrawn. Perusal of the settlement dated 28.08.2017 reveals that during the mediation proceedings, it was informed by the parties that Indra Devi (mother of Pradeep Rana) had also expired on 07.07.2016.

Subsequently, Amardeep Rana, claiming himself to be the son of deceased Indra Devi (mother of deceased Pradeep Rana) moved application u/o 22 R 9 CPC r/w Order 23 R 3 and 3A r/w Sec. 151 CPC alongwith application u/s 5 of Limitation Act for condonation of delay in moving the said application against the defendants no.1 to 4 (non-applicants). On 22.09.2019, Ld. Predecessor of this court had issued the notice of the said application to Suman and the defendants no.1 to 4/non-applicants. As per record, the said parties appeared through their counsels before the court and the defendants no.1 to 4 have filed the reply to the said applications. Consequently, the said applications were fixed for arguments on 18.03.2020. On 18.03.2020, the hearing could not take place due to pandemic COVID-19. As revealed from the record, in the meantime, Amardeep Rana also expired. Consequently, Sudesh i.e. the present applicant moved an application u/o 22 R 3 CPC for impleadment of LR's of deceased as mentioned in para 3 of the said application and the application u/o 39 R 1 & 2 CPC. As per record, in

Contd.....3/-

: 3 :

terms of order dated 21.12.2019, the notice on the application u/o 22 R 3 CPC were issued but the defendants no.1 to 4/non-applicants remained unserved. On 21.12.2019, it was specifically ordered that in view of the pendency of the applications, there was no occasion to issue the notice on the application u/o 39 R 1&2 CPC moved alongwith the application u/o 22 R 3 CPC.

In view of the foregoing discussions, it can be held that the applicant's application for impleadment of LR of Amardeep is pending for disposal. Therefore, till its disposal, there is no occasion to deal with the application u/o 39 R 1&2 CPC moved by the applicant which was made clear vide order dated 21.12.2019 which is final as on date. Further, as no notice on the application u/o 39 R 1&2 CPC has been issued, therefore, there is no occasion for preponement of date of hearing on the said application. Not the least, as mentioned above, during the course of the arguments, counsel for the applicant pleaded that the defendants no.1,3 & 4 have already sold the subject property to one Joginder and sought urgent disposal of the application u/o 39 R 1&2 CPC to restrain them from taking the possession of the suit property. However, vide the application u/o 39 R 1&2 CPC, the applicant is seeking directions to restrain the defendants from creating third party interest in the suit property which according to counsel for the applicant himself, the defendants no.1,3 & 4 have already done.

In view of the foregoing discussions, I am of the opinion that the present application is devoid of merits. Not the least, the shortest date was given as per the court diary i.e. 14.10.2020. Hence, the application is dismissed.

(Pankaj Gupta)
ADJ-1(North)/Delhi/10.08.2020