

SANJAY LOHIA Vs. MANOJ LOHIA AND ORS

08.05.2023

Present: Sh. Prasanna, Ld. Counsel for the plaintiff along with PW1.

Sh. T.C. Sharma, Ld. Counsel for the defendants.

An application for waiver of the costs of Rs. 5,000/- imposed upon the defendant has been filed on record by the ld. counsel for the defendants on the ground that the matters of 09.03.2023 were taken up on 10.03.2023 and that is why, the ld. counsel for the defendants appeared before the court at 12:51 PM.

Ld. counsel for the plaintiff has vehemently opposed the above said application filed by the ld. counsel for the defendants.

The ordersheet dated 10.03.2023 reveals that after waiting till 12:30 PM, costs were imposed upon the defendant. However, keeping in view the ground as taken by the ld. counsel for the defendant in the above said application, the application is partly allowed and the costs of Rs. 5,000/- are hereby reduced to Rs. 3,000/-.

The suit is of the year 2017, the stamp on the backside of the plaint and that on documents filed along with the plaint is bearing date 05.08.2017. Documents filed along with the plaint include the sale deeds dated 17.05.1975, Wills dated 27.06.1980 and the legal notice dated 14.04.2017.

In evidence by way of affidavit, PW1 has mentioned the above said documents in his evidence but the above said documents have not been exhibited. Ld. counsel for the defendant at this stage, has raised the objection that he was not supplied with the copies of the above said documents at the time of filing of the plaint, despite the fact that he had taken an objection to this effect in the written statement.

Ld. counsel for the defendant states that since the documents have not been exhibited by PW1 in the evidence by way of affidavit, he has

objection to the exhibition of the documents as well.

I have carefully gone through the entire material available on record and heard the rival submissions of both the ld. counsels for the parties.

As stated hereinabove, the plaint and the documents i.e. sale deeds dated 17.05.1975, Will dated 27.06.1980 and legal notice dated 14.04.2017 are bearing date 05.08.2017 which leads to the irresistible conclusion that the documents were filed along with the plaint and the same were not filed subsequently.

Today, we are in 2023, ld. counsel for the defendant has raised the objection to the non-receipt of the documents after a gap of six years, at the time of tendering of the affidavit of PW1.

I have carefully gone through the previous ordersheets of the present suit and none of the ordersheets mentions the objections of the defendant which is being raised at this stage. As such, I am of the opinion that the above said plea of the ld. counsel for the defendant cannot be accepted.

Now coming to the submission of the defendant that the above said document cannot be exhibited, since the documents have been mentioned in the affidavit of PW1, I am of the opinion that the above said documents can be exhibited. As such, let the affidavit of PW1 be tendered.

PW1 has been examined. Cross-examination of PW1 has been deferred, at the request of the ld. counsel for the defendant.

At the request of the ld. counsel for the defendant, now to come up for cross-examination of PW1 and for entire remaining PE as well on 08.08.2023.

(Raj Kumar)
ADJ-02/ North/ Rohini Court
Delhi/08.05.2023