

24.10.2024

Present: Sh. Neeraj Kumar Jha, Ld. Counsel for the plaintiff (through VC).
Sh. Sarabjeet Singh, Ld. Counsel for the defendants no.1 to 5.
Proceedings against defendant no.6 already stood abated vide order dated 02.09.2021.
None for defendant no.7 (already ex-parte).

Amended memo of parties filed on behalf of plaintiff.

At this stage, Ld. Counsel for plaintiff seeks leave to withdraw the same with liberty to file fresh amended memo of parties.

In view of the same, amended memo of parties filed on behalf of plaintiff today, is taken off the record.

Ld. Counsel for defendants no.1 to 5 submits that as per record, the defendants have to pay costs of Rs.5,000/- previously imposed upon them by Ld. Predecessor Court.

Ld. Proxy Counsel for plaintiff submits that as per instructions, both the costs imposed upon the plaintiff as well as the defendants may be set off.

Accordingly, the costs imposed upon the plaintiff as well as the defendants is hereby, set off.

Reply filed on behalf of the plaintiff to the application U/o 14 Rule 5 CPC filed on behalf of defendants no.1 to 5. Copy supplied.

Arguments heard.

Ld. Counsel for defendants no.1 to 5 submits that the burden of proving Issue no.1 is rightly placed upon them and it is only the burden of proof w.r.t. the remaining Issues no.2 to 4 is inadvertently placed upon the defendants, being pertaining to Prayer

Clause A, B and C of the plaint, whereas the onus of proving the same ought to have been placed upon the plaintiff.

Ld. Counsel for plaintiff has objected to the above submissions of Ld. Counsel for defendants no.1 to 5 on the ground that the issues framed by Ld. Predecessor Court was duly framed after considering the plaint and stand taken by the defendants in their WS.

This Court has perused the record and this Court agrees with submissions of Ld. Counsel for defendants no.1 to 5 that the issues no.2 to 4 have categorically framed in the light of the Prayer Clause A, B and C of the plaint and the burden of proving the same could not have been placed upon the defendants and the same should have been placed upon the plaintiff to prove his case so as to entitle him to recover the suit amount from the defendants.

In view of the same, **the application U/o 14 Rule 5 CPC filed on behalf of defendants no.1 to 5 is allowed** and the issues framed vide order dated 01.09.2022 by Ld. Predecessor Court are modified and reproduced hereinbelow for the purpose of trial in the present suit as follows :-

1. **Whether the present suit is filed in collusion with defendant no.7 ? OPD.**
2. **Whether plaintiff is entitled for the decree of recovery as prayed for in the prayer clause 'A' in the plaint ? OPP.**
3. **Whether plaintiff is entitled for the decree of declaration as prayed for in the prayer clause 'B' in the plaint ? OPP.**
4. **Whether plaintiff is entitled for the decree of injunction as prayed for in the prayer clause 'C' in the plaint ? OPP.**
5. **Relief.**

Put up for PE on 15.02.2025.

(Ankur Jain-II)
DJ-02, SHD District
KKD/Delhi 24.10.2024