

29 CS 429/17

HIMANSHU AGGARWAL Vs. BAL KISHAN SHARMA

27.10.2023

File received by way of transfer to this Court vide office order No.7089-94/Judl./Shd./KKD/2023 dated 01.09.2023 passed by the Ld. Principal District & Sessions Judge, Shahdara District, Karkardooma Courts, Delhi.

It be checked and registered.

Present: Sh. Trilok Chand, Ld. Counsel for the plaintiff.
Sh. A.K. Johri, Ld. Counsel for the defendant.

An application under Order IX Rule 7 CPC and an application u/s 5 of Limitation Act have been moved on behalf of defendant. Copy supplied. Same is taken on record.

The Ld. Counsel for the plaintiff submits that plaintiff does not wish to file any reply of the said applications. Ld. Counsel for the plaintiff further submits that he has no objection if the present applications are allowed subject to heavy cost.

The present matter is listed for plaintiff evidence.

On 30.05.2023, PW-1 was examined and as none has appeared on behalf of defendant, the opportunity of defendant to cross examine to PW-1 was closed and he was proceeded exparte in the present matter.

It is matter of record that the witness PW-1 was examined on 30.05.2023 and the right of defendant to cross examine of PW-1 was closed on the same day. The matter is still at plaintiff evidence.

In view of this court, great prejudice would be caused to the defendant, if the defendant is not granted to cross examine PW-1 and the order proceeding defendant exparte is not set aside.

Perusal of the record shows that WS of defendant is already on record.

It is settled law that the matter should be decided on merits by giving equal opportunity to the parties to present their case.

(2)

In view of the submissions, contentions made in the application, no objection given by the Ld. Counsel for the plaintiff and above observations, the application under order IX Rule 7 CPC and application u/s 5 of Limitation Act are hereby allowed subject to cost of Rs.5,000/- which is to be paid to the plaintiff.

The order proceeding defendant ex parte is set aside and defendant is granted to opportunity to cross examine PW-1 on NDOH. It is made clear that defendant shall get only one opportunity to cross examine the PW-1 and if any adjournment is sought on the NDOH then the right to cross examine of PW-1 shall be closed.

Applications are accordingly disposed off.

Copy of evidence affidavit of PW-1 is provided to the Ld. Counsel for the defendant today in the court.

Application on behalf of plaintiff to summon the witness filed. Copy supplied.

Ld. Counsel for the defendant submits that he has no objection if the present application be allowed.

In view of the submissions, contentions made in the application, application for summoning the witnesses is hereby allowed.

Witnesses mentioned in para no.1 in the application are summoned for the NDOH on filing of PF/RC/Courier, returnable on 08.01.2024.

Witnesses are directed to bring relevant record in original as well as duly certified along with two sets of photocopies. Diet money be paid on the spot.

Application is accordingly disposed off.

Put up for plaintiff evidence on 08.01.2024.

Date is given as per the convenience of the counsels.

(Deepanker Mohan)
Additional District Judge-04
Shahdara District/KKD Courts/Delhi
27.10.2023