

CS 2581/16

**BRIDGEWAY FIDUCIARY ADVISORS P.LT. THROUGH
HEMANT
Vs.
KAMAL KUMAR MOHTA**

22.05.2023

Present : Ms. Garima Khandelwal, Ld. Counsel for plaintiff.
Mr. Vaibhav Shah, Ld. Counsel for defendants.

Arguments on the preliminary issue heard.

In support of the issue, counsel for plaintiff submits that though they filed the instant suit on 13.03.2014 before the Hon'ble High Court, however, it came be listed before the Ld. Bench only on 12.05.2014 since it was pending before the Ld. Registrar (Filing) for objections.

Ld. Counsel for plaintiff further submits that at the time of filing of the suit, defendant no.1 was very much alive and thus this suit is maintainable.

Per contra, counsel for LR's of defendant nos. 1 and 2 submits that the date of listing of the matter before the Hon'ble High Court is the date of the registration of the suit and thus the suit is not maintainable because on the date of listing of the matter before the Hon'ble High Court, defendant no.1 was no more and thus, suit was filed against a dead person.

Submissions heard. Record perused. Considered.

Since at the time of filing of the suit, the defendant

no.1 was very much alive, there was no occasion for the plaintiff to withdraw the suit upon his death as it has already been filed. Further date of filing of the suit before the Registry is the relevant date to ascertain the status of parties on that date.

In these circumstances, the preliminary issue is answered in favour of the plaintiff. Accordingly, the suit is held to be maintainable as at the time of filing of the suit, defendant no.1 was very much alive.

At this stage, counsel for LR's of defendant nos.1 and 2 submits that some time may be given to him for filing the WS. Let the same be filed within stipulated period with advance copy to the opposite party.

Thereafter, replication be filed with advance copy to the opposite party.

Put up on **19.08.2023** for completion of pleadings/ framing of issues/ proposed issues/ list of witnesses/ affidavit of admission/ denial of documents.

(Ajay Garg)
Additional District Judge-01
(East)/KKD/Delhi/22.05.2023