

18CS DJ-939/19
MOHD TAHIR Vs. RAM MILLAN ANR

06.09.2023

Present : Plaintiff in person with Ld. Counsel, Ms. Geetika Sharma.
Sh. Yogendra Singh, Ld. Counsel for defendant no.1.
Sh. A.K. Sen, Ld. Counsel for defendant no.2.

Today, matter has come up for consideration of application to recall order dated 15.02.2023 vide which right of plaintiff to lead PE was closed.

Present application has been moved by plaintiff stating that Ld. Counsel was in personal difficulty since August, 2022 owing to health issues in her family. She further submits that on 15.02.2023 when the last order was passed, she was in hospital. However, it was wrongly recorded in the said order that '*Ld. Counsel is presently stuck in Tis Hazari Courts*'. She further states she could not present herself before the court as she was busy attending to medical emergency in her family. Ld. Counsel for plaintiff further submits that owing to spread of COVID-19 pandemic, the matters had been heard through VC till middle of 2021.

Per contra, ld. Counsel for defendants submits that multiple opportunities had been given to the plaintiff for filing of the evidence. However, they have not complied with any order of this court.

Submissions heard. Application perused.

Perusal of record shows that the matter was initially filed in 2015 and issues were originally framed vide order dated

17.10.2017. However, time was sought to amend the valuation of the suit on 16.01.2018. At that point of time also, various opportunities were granted to the plaintiff to do the same. However, due to inaction of the plaintiff, the suit was dismissed in default vide order dated 07.08.2018. On an application for restoration, the matter was restored and revised issues were framed vide order dated 04.03.2020 and the matter was adjourned for PE to 13.04.2020. Thereafter, multiple opportunities were granted to the plaintiff to file his evidence, however, despite appearing before the court, the plaintiff failed to file any evidence and last opportunity was granted to file the same on 06.12.2022 subject to cost of Rs.2000/- but the same was not filed. Even if allowance is made for non-working of courts during the COVID period, record reflects that the plaintiff failed to file his evidence despite appearing in the court and resultantly, the evidence of the plaintiff was closed vide order dated 15.02.2023. However, the explanation of not filing the evidence has been given only for the period commencing after August 2022 and no explanation or reason of non-filing of evidence from 04.03.2020 to August 2022 is forthcoming.

At this stage, enumerating all the defaults by the plaintiff is not required but it is clear from the conduct of the plaintiff that he is continuing with this litigation without taking any serious steps at any point of time. Various directions given at several times have not been complied with.

Present application under consideration has been filed on 10.03.2023. However, affidavit in evidence has not been

filed along with the application. On enquiry from Ld. Counsel for plaintiff, Ld. Counsel submits that the affidavit of evidence is still not ready. She further submits that even if the application is allowed, the plaintiff would seek further time to file the same.

The overall conduct of the plaintiff clearly shows that his approach has been clearly dilatory and is not interested in the matter and is only interested in delaying the matter. As such, no infirmity is shown or found in the order dated 15.02.2023 and no grounds are made out for recall of order dated 15.02.2023.

Accordingly, present application stands dismissed.

Put up for DE **on 03.11.2023.**

(Rahul Bhatia)
ADJ-01 (South East) Saket Court
New Delhi/06.09.2023 (vg)