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CS DJ ADJ 443/19

T.S. Ramakrishnan Vs. Gladwin Das @ Anthony & Ors.

Senior Citizen Matter.

11.11.2024

Present: Sh. Arvind Vashisth, Ld. Counsel for the plaintiff with plaintiff.

Ms. Shilpi Ganguly, Ld. Counsel for the defendant no. 3. Defendant no. 1, 2, 4, 5 and 6 are already proceeded *ex-parte* vide order dt. 08.11.2023.

(1) Application u/s 151 CPC filed on behalf of defendant no. 3 for recalling of order dt. 27.08.2024 alongwith WS, application u/o VII Rule 11 CPC and application for striking out name of defendant no. 3. Copy supplied.

(2) At this stage, Ld. counsel for plaintiff submits that he is not inclined to file any reply to above applications and would straightway argue the same.

(3) Arguments heard. Record perused.

(4) By way of application u/s 151 CPC, defendant no. 3 is seeking recalling of order dt. 27.08.2024 wherein right to file WS were closed. While by way of other applications, defendant no. 3 is seeking rejection of plaint as well as her deletion from array of parties.

(5) Record reveals that defendant no. 3 is regularly appearing before this court since, 06.03.2023 but, failed to file any WS despite multiple opportunities. Record further reveals that on 14.02.2024,

fresh vakalatnama filed on behalf of defendant no. 3 and more time was sought to file WS on the ground that paper book is not provided. Thus, right to file WS was closed.

(6) Record further reveals that on 17.05.2024, in the interest of justice order dt. 14.02.2024 was recalled, one more last and final opportunity was granted to defendant no. 3 to file WS within 02 weeks subject to cost. But, neither cost paid nor WS filed in compliance of said order. Hence, right to file WS was closed again vide order dt. 27.08.2024.

(7) Ld. counsel for defendant no. 3 submits that she has no privity of contract with the plaintiff and not necessary party to the present proceeding. It is also submitted that on 03.04.2024, she applied for certified copy of entire paper book and same was provided to her only on 25.04.2024. It is also submitted that records were voluminous. Hence, it took time to prepare WS and same was e-filed on 14.08.2024 with advance copy to Ld. counsel for plaintiff via e-mail.

(8) *Per contra*, Ld. counsel for plaintiff vehemently opposed receipt of WS as well as submissions made by defendant no. 3.

(9) It is submitted that plaintiff is senior citizen and given his hard earned money to the defendants to purchase property owned by defendant no. 2. It is further submitted that defendant no. 1 to 5 are siblings and in collusion with each other. It is also submitted that, sale consideration was transferred in their account as per their request. Lastly, it is submitted that above application may be dismissed with heavy cost.

(10) Considering the facts and circumstances of the present case, although this court does not find any reason to take WS on record as multiple opportunities were granted to defendant no. 3 but again in the interest of justice and for fair trial, WS filed on behalf of defendant no. 3 is taken on record subject to further cost of Rs. 3,000/- to be paid to the plaintiff.

(11) So far as, other applications i.e. application u/o VII Rule 11 CPC and application for deletion of defendant no. 3 is concerned, considering facts and circumstances of this case, this court does not find any merit in the said applications. Hence, same are dismissed.

(12) At this stage, both parties submit that issues may be framed.

(13) At this stage, Ld. counsel for defendant denied all the documents filed on behalf of plaintiff. No Document filed on behalf of defendant no. 3 and other defendants are already proceeded *ex-parte*.

(14) Pleadings are complete. From the pleadings of the parties, following issues are framed:

- (i) Whether there was no privity of contract between plaintiff and defendant no. 3? OPD3
- (ii) Whether present suit is barred by limitation? OPD3
- (iii) Whether plaintiff is entitled to a money decree for a sum of Rs. 28,00,000/- as prayed? If affirmative, whether defendants are jointly and severally liable for the decretal amount, if any? OPP
- (iv) Whether plaintiff is entitled to pre-suit, pendente-lite and future interest, if so, at what rate and for what period ? OPP

- (v) Whether plaintiff is entitled for cost, as prayed for? OPP
- (vi) Relief.

- (15) No other issue arises or pressed for.

- (16) Put up for PE on 24.12.2024.

- (17) List of witnesses be filed by both the parties within 15 days, after exchanging copies thereof. The copies of evidence by way of affidavit of the witnesses be supplied to opposite side at least 15 days prior to the NDOH.

(SHILPI M JAIN)
DJ-05 (SW)/Dwarka Courts
New Delhi: 11.11.2024_(m)