

30.05.2019

Present: Advocate Shri Sarojanand Jha along with Shri Suraj Malik,
attorney of plaintiff
Defendant no.1 Smt. Shalu.
Advocate Shri Bhagat Singh along with defendant No.3 Ms.
Rajni Singh.

Defendant no.2 Shri Om Prakash is still unserved and
summons could not be issued as fresh address of defendant No.2 was not
filed along with PF & RC.

An application under Order VIII read with Section 151 CPC has
been filed by defendant no. 3 on 08.04.2019 along with written statement
and another application under Order VIII Rule 10 read with Section 148 &
151 CPC for recalling order dated 14.03.2019 whereby defendant's right to
file written statement was closed.

Advance copy thereof has been supplied to plaintiff's counsel
who has filed application under Order V Rule 20 CPC for substituted service
of summons upon defendant No.2 Shri Om Prakash through publication in
Hindi Newspaper "*Veer Arjun*".

Submissions heard.

Ld. Counsel for plaintiff submits that address mentioned in the
memo of parties is the last known address of defendant No.2 Shri Om
Prakash by stating about status report of I.O. filed in FIR No. 568/2017
under Section 420 IPC PS Uttam Nagar wherein it is reported that

defendant No.2 is not traceable at his last known address.

Since service of summons could not be effected upon defendant No.2 through ordinary process and summons issued for 09.01.2019 & 14.03.2019 were received back unserved so **application under Order V Rule 20 CPC is allowed** and plaintiff is directed to file PF and publication charges for substituted service of summons upon defendant No.2 Shri Om Prakash through publication in Hindi newspaper “**Veer Arjun**” returnable on **31.08.2019**.

Matter is passed over **till 12:30 p.m.** for submissions upon pending applications.

(Tarun Yogesh)
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Second call at 12:27 p.m.

Present: Advocate Shri Sarojanand Jha for plaintiff
Defendant no.1 Smt. Shalu.
Advocate Shri Bhagat Singh along with defendant No.3 Ms. Rajni Singh.

Ld. Counsel for plaintiff has opposed defendant's application under Order VIII Rule 1 read with Section 151 CPC for recalling order dated 14.03.2019 closing defendant's right to file written statement and the other application under Order VIII Rule 10 read with Section 148 & 151 CPC for taking written statement of defendant No. 3 on record by referring to para No.1 of the first application wherein defendant No.3 has stated that complete paper book of plaint and annexures was not supplied.

Ld. Counsel for defendant No.3, per contra, has adverted to

para No. 2, 3 and 4 of the first application and referred to affidavit of defendant No.3 Ms. Rajni Singh verifying contents of written statement attested by Oath Commissioner on 11.03.2019 and affidavit filed along with second application under Order VIII Rule 10 read with Section 148 & 151 CPC attested by Oath Commissioner on 14.03.2019 in support of application for recalling order closing defendant's right to file written statement and taking statement of defendant No.3 on record.

It is well settled law that sufficient cause should be interpreted liberally so as to advance substantial justice when no negligence, nor inaction nor want of bonafides is imputable as held by Hon'ble Supreme Court of India in case titled ***Shakuntala Devi Vs. Kuntal Kumari & Ors.*** AIR 1969 SC 575.

Further, it is apt to note that Hon'ble Supreme Court of India in case titled ***Zolba vs. Keshao & Ors.*** AIR 2008 SC 2099 has held that Order VIII Rule 1 CPC is not mandatory and it would be open to the Court to permit the appellant to file his written statement, if exceptional circumstances have been made out.

It is, therefore, evident from the affidavits attested by Oath Commissioner on 11.03.2019 and 14.03.2019 that defendant No.3 was present in Dwarka Courts and appeared before the Oath Commissioner for attestation of her affidavits.

Applications for recalling order closing right of defendant No. 3 to file written statement and for taking her written statement on record are, therefore, allowed. Written statement of defendant No.3 is taken on record.

Ld. Counsel for defendant No. 3 submits that no separate reply to plaintiff's application under Order XXXIX Rules 1 & 2 CPC has been filed and averments in the written statement of defendant No.3 may be treated as reply to plaintiff's application.

Status quo with respect to title and possession of suit property be maintained till next date of hearing and matter is adjourned to date fixed i.e. **31.08.2019** for submissions upon plaintiff's application.

(Tarun Yogesh)
ADJ-03 : Dwarka Courts
Delhi/30.05.2019