

Suit No: 607821/16

Janki Kushwahavs Panchi Devi & ors

25.08.2017

At 04:00 PM

Present : None

An application under section 151 CPC has been moved by plaintiff. It is stated on behalf of plaintiff that vide order dated 18.01.2017, Ld. Predecessor imposed a cost of Rs. 5,000/- upon the defendant as proposed issues were not filed by the defendant. It is stated that inadvertently the said cost was imposed upon the plaintiff. By virtue of the said application, plaintiff seeks rectification in the order dated 18.01.2017.

Defendant has stated in the reply to the said application that issues have to be framed by the court and parties have to only assist the court to the extent to which the court asks and the parties cannot be burdened with the cost for said purpose. It is further contended that the plea was raised by the defendant that the plaintiff has filed wrong proposed issues and therefore, court wanted to hear arguments on the same. But adjournment was sought on behalf of the plaintiff as main counsel for the plaintiff was not present on that date. Hence, cost was imposed upon the plaintiff and there was no typographical error in the order.

I have heard the rival contentions and have perused the record.

Vide order dated 18.01.2017, my Ld. Predecessor imposed a cost of Rs. 5,000/-. As per order sheet, the said cost has been imposed upon the plaintiff but as per the present application of

the plaintiff the word "Plaintiff" has been wrongly mentioned in the ordersheet. It is stated on behalf of the defendant that there is no typographical error in the order. It is further stated that the proposed issues filed by the plaintiff were wrong and the defendant wanted to address arguments on the same. The same could not be heard as main counsel for the plaintiff was not available. Therefore, the cost was rightly imposed upon the plaintiff. However, the submissions made by the defendant in the reply are not in consonance with the judicial record. Perusal of record dated 18.01.2017 shows that no such submissions has been made before the court that the proposed issues filed by plaintiff are incorrect. Further as per the order main counsel for the plaintiff was present. Perusal of the said record shows that the proposed issues were filed by the plaintiff and infact adjournment was sought on behalf of the defendant for filing of proposed issues. Adjournment request was strongly opposed but same was granted in the interest of justice.

Considering the entire ordersheet, it appears that the word "Plaintiff" in the lines "...granted to the plaintiff subject to payment of cost of Rs. 5,000/-..." is typographical error. It is amply clear from the ordersheet dated 18.01.2017 that defendant sought adjournment for filing of proposed issues and the opportunity was granted to defendant. However, cost was imposed to compensate the delay in the trial.

The contention of the defendant that framing of issues is the duty of the court could not be considered while disposing off the present application as said grounds are relevant for considering the prayer waiver of the cost and not for the present application.

Hence, the application of the plaintiff is allowed. The order dated 18.01.2017 stands rectified and the word “plaintiff” be read as word “defendant” in the lines'.....granted to the **plaintiff** subject to payment of cost of Rs. 5,000/-'.

It is made clear that cost of Rs. 5,000/- has been imposed upon the defendant.

Be listed for admission-denial of documents and framing of issues on 22.11.2017

Sugandha Aggarwal
ADJ-07/West/Delhi
25.08.2017