



28

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CS(OS) 2658/2013

SANTOSH KUMAR ARORA

..... Plaintiff

Through: Mr. Sumit Jidani, Advocate.

versus

REETA ARORA

..... Defendant

Through: Mr. Harsh Ahuja, Advocate with
Mr. Kushal Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

%

28.02.2018

I.A. 2736/2018 (exemption)

Keeping in view the averments in the application, defendant is exempted from filing the certified copies of documents at this stage.

Needless to say, this order is without prejudice to the rights and contentions of the parties.

Accordingly, present applications stand disposed of.

I.A. 2735/2018 & 2794/2018 in CS(OS) 2658/2013

While I.A. 2735/2018 has been filed under Order 9 Rule 7 CPC for recall/ setting aside the order dated 10th January, 2018 whereby this Court proceeded ex parte against the defendant, I.A. 2794/2018 has been filed under Section 151 CPC for stay of the said ex parte order.



In the present applications, it has been averred that the defendant did not appear before the Joint Registrar on 20th December, 2017 and 05th January, 2018 as counsel for defendant had wrongly noted the date as 20th January, 2018 instead of 20th December, 2017.

This Court is of the view that the plea of wrong noting of date inspires no confidence as not only the month, but the year is also different. The averment in the application, *“the Applicant on the last date of hearing had wrongly noted down the date as 20/01/2018 instead of 20/12/2018”* is also contradictory.

A perusal of the file also reveals that on 04th December, 2017 the plaintiff had closed its evidence. Though the defendant's list of witnesses had to be filed within two weeks from 21st July, 2016, yet the Joint Registrar on 04th December, 2017 permitted the defendant to do the needful before the next date of hearing.

On 20th December, 2017 neither the counsel for the defendant was present nor the list of witnesses was on record. Even the evidence by way of affidavit by the defendant was not filed. The Joint Registrar in the interest of justice gave last and final opportunity on the said date to the defendant to file its evidence by way of affidavit as well as to ensure that its list of witnesses is brought on record.

As the defendant was not present on the next date i.e. 05th January, 2018, the evidence of the defendant was closed and the matter was directed to be listed before Court on 10th January, 2018.

On the said date, the defendant was proceeded ex parte and the matter was directed to be listed in the category of ‘Finals’ in the week commencing 22nd January, 2018. Thereafter, the matter was repeatedly adjourned at the



request of learned counsel for defendant as he had stated that he had filed an application for recall.

It is pertinent to mention that present application was filed on 23rd January, 2018 and was returned under defects. It was re-filed on 05th February, 2018.

In the opinion of this Court, even if defendant's version is believed, defendant should have ensured that its list of witnesses as well as its evidence by way of affidavits was on record.

In fact, neither the affidavit nor the list of witnesses is still on record.

However, in the interest of justice and subject to payment of costs of Rs.50,000/- to the Lok Nayak Hospital, New Delhi, within a period of three weeks, the present applications are allowed.

Let the receipt of cost be filed within a period of one week thereafter.

The defendant is directed to file its list of witnesses and evidence by way of affidavits within a period of four weeks. They shall be taken on record subject to payment of costs.

CS(OS) 2658/2013

List the matter before the Joint Registrar for recording of defendant's evidence on 18th April, 2018.

MANMOHAN, J

FEBRUARY 28, 2018

js