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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **TEST.CAS. 7/2011**

RAJESH GARG

..... Petitioner

Through: Mr. Padam Kant Saxena and Mr.
Deepak R. Dahiya, Advs.

Versus

STATE & ORS

..... Respondents

Through: Ms. Prabhsahay Kaur, Adv. for R-1.
Mr. Pawan Kumar Bahl, Adv. for LR's
of R-2, R-5 & 6.
Mr. Ankit Jain, Mr. Vishal Saxena,
Mr. Siddhant Nath and Ms. Minakshi
Garg, Advs. for R-4 with R-4 in
person.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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10.05.2019

**IAS No.14954/2018 & 14955/2018 (of R-4 for modification of order
dated 2nd April, 2018 and for condonation of 190 days in filing thereof)**

1. This Test.Cas. stands consolidated with CS(OS) No.1638/2009 which is not listed today, owing perhaps to this application having been filed only in this Test.Cas.

2. When two proceedings are consolidated for trial and adjudication, even if on the ground of an application filed only in one, the proceedings are to be listed before the Court, both/all the consolidated proceedings should be listed and not just the proceeding in which the application has been filed, inasmuch as once the proceedings have been consolidated, it becomes

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difficult to hear counsels only in the context of the file of one of the proceedings.

3. The Joint Registrar (Original) to take note of above for all future listings as well.

4. Though IA No.14954/2018 has been filed seeking setting aside of the order dated 2nd April, 2018 of consolidation of the two proceedings for trial but the counsel for the applicant/respondent No.4 does not press therefor.

5. On the contrary, attention is invited to paragraph 12 of the application and the counsel for the applicant/respondent No.4 has drawn attention to paragraphs 13 to 16 of the order dated 2nd April, 2018 and contends that Mr. Anil Sharma, Advocate appearing for the applicant/respondent No.4 on 2nd April, 2018 was not instructed by the applicant/respondent No.4 to make the concession as made by him and recorded as aforesaid.

6. The litigant, once engages an Advocate and allows the Advocate alone to appear in the Court, is bound by the decisions/actions of the Advocate taken on his feet in the Court and cannot, by engaging another Advocate seek to change the stand taken by the Advocate engaged earlier. This Court can function expeditiously only if believes the Advocates and the functioning of the Courts would come to stand still if a practise is evolved of merely by engaging a new Advocate reneging from the commitments made by the earlier Advocate.

7. On enquiry, it is informed that after the order dated 2nd April, 2018, no evidence has been recorded as yet, save for tendering into evidence of the affidavits by way of examination-in-chief of the plaintiff.

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8. Cautioning the litigants/counsels to be careful in future, the applications to the extent aforesaid are allowed and the applicant/respondent No.4 is permitted to renege from the statement of his counsel as recorded in paragraphs 13 to 16 of the order dated 2nd April, 2018.

9. Resultantly, the issues in CS(OS) No.1638/2009 ordered vide paragraph 17 of the order dated 2nd April, 2018 to be amended in terms thereof are restored to as framed on 15th March, 2012.

10. The applications are disposed of.

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11. The counsel for the petitioner in Test.Cas. states that file of another suit being Suit No.243/2008 titled ***Jyoti Prasad Garg Vs. Ram Niwas*** of the Court of Sh. Brijesh Kumar Garg, Additional District Judge, Tis Hazari Courts, Delhi has also been ordered to be transferred to this Court to be tried along with CS(OS) No.1638/2009 and this Test.Cas. and the file has been received and tagged to the file of CS(OS) No.1638/2009 but the said transferred suit has not been re-numbered.

12. The Registry to re-number the said transferred suit.

13. The parties to contact the Commissioner appointed for recording evidence to proceed with the recording of evidence.

RAJIV SAHAI ENDLAW, J.

MAY 10, 2019

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