



\$~10

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

+ **CS(OS) 2145/2010**

RISHABH INTERIORS PVT LTD

..... Plaintiff

Through: Mr. Arjun Singh Bhati, Advocate

versus

M/S REI AGRO LTD & ORS.

..... Defendants

Through: Ms. Navneet S. Sehgal, Advocate for
D-1 & 2.

Mr. Rajnish Kumar, Adv. for D-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

%

23.02.2017

IA No. 8630/2016 (under Order 9 Rule 7 CPC moved by defendant No.3 wrongly mentioned in the caption as application of defendant No.2)

This defendant No.3 was impleaded on application under Order 1 Rule 10 CPC moved by the plaintiff being allowed by order dated 23.07.2014. It is noted that defendant No.3 before such impleadment had been called by a notice to show cause, and, thus, was participating from very first day of its impleadment. It is also noted that there was an application under Order 6 Rule 17 CPC (IA No. 12025/2012) for amendment of the plaint consequential to impleadment of such parties which was also allowed by the same order dated 23.07.2014 of the Joint Registrar. The subsequent proceedings indicate that the plaintiff took some time in coming with the amended plaint on record and supplying copy of the same to the defendants.

Be that as it may, it was submitted on behalf of defendant No.3 that the written statement was filed against diary No. 337257 on 16.07.2015. It

CS(OS) 2145/2010

page 1 of 3



appears the said written statement came under some objections in the registry and the defendant No.3 neither took any steps for removal of such objections nor was diligent in participating in the proceedings and consequently he being set *ex-parte* by order dated 6.5.2016. The application at hand seeks setting aside of the said order with additional prayer orally made of the written statement already submitted to be taken on board subject to removal of office objections.

When the matter was taken up on the last of hearing and today counsel for the applicant introduced himself as counsel for defendant No.2. This is how he described himself as the applicant even in the application thereby creating confusion in the proceedings on record. When the application was heard earlier in the day, counsel was not sure as to the status of the written statement which he had submitted in 2015. He was given time to go back to the registry and ascertain/verify the facts and come back. He now submits that written statement was taken back from the registry because of the office objections but thereafter steps were not taken. It is noted that by previous order dated 26.10.2016, the *ex-parte* proceedings against defendant No.3 were also set aside. In this view, having regard to the status of the proceedings in the matter at hand, one indulgence deserves to be shown though subject to suitable costs to compensate the plaintiff for consequent delay.

Keeping in mind the conduct of defendant No.3, as demonstrated above, the application for setting *ex-parte* proceedings against defendant No.3 is allowed subject to costs of Rs. 5,000/-, subject, however, to the condition that the costs shall be paid positively on the next date and the written statement filed within two weeks after removal of office objections.



CS(OS) 2145/2010

The costs imposed on last date against defendant No.1 have been paid today by the counsel to the plaintiff's counsel. She submits that she has also since filed vakalatnama on behalf of defendant No.2, she having been additionally engaged by that party in this case.

On the oral request now made by the learned counsel on behalf of defendant No.2, to which plaintiff concedes except as to costs, the *ex-parte* proceedings against that party are also set aside again on costs of Rs.5,000/-. Written statement of this defendant is already on record and, therefore, shall be taken into consideration.

The case shall be listed before the Joint Registrar for completion of pleadings on 18th May, 2017.

R.K.GAUBA, J.

FEBRUARY 23, 2017

nk