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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 330/2018

ASHOK KUMAR

..... Plaintiff

Through

Mr. Rajiv Raheja, Adv.

versus

MUNNI DEVI

..... Defendant

Through

Mr. N.P. Joshi, Adv. for D-3.

CORAM:

SANJAY JINDAL (DHJS), JOINT REGISTRAR (JUDICIAL)

ORDER

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26.10.2018

CS(OS) 330/2018

Vide order dated 13.09.2018, the matter was put before the Hon'ble Court for 24.09.2018 in view of the submissions made on behalf of plaintiff. Vide order dated 24.09.2018, the Hon'ble Court has sent the matter back for completion of pleadings.

In the present matter, the plaint was amended by the plaintiff at the District Court and in view of enhancement in the valuation, the matter was transferred to the Hon'ble High Court in view of pecuniary jurisdiction.

No written statement has been so far filed by the defendant no. 3 to the amended plaint. Learned counsel for defendant no. 3 seeks two weeks further time for filing of written statement with contention that he has already applied for certified copy of the amended plaint and they shall file the written statement within two weeks.

The request is strongly opposed by learned counsel for plaintiff with contention that more than five months have already lapsed after the copy of amended plaint was supplied to learned counsel for

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-2-

defendant no. 3 on 14.05.2018 before the Ld. ADJ prior to transfer of the matter.

Learned counsel for defendant no. 3 states that the matter remained pending consideration in District Court for few dates on the point of pecuniary jurisdiction and that due to some personal reasons, the written statement could not be filed earlier.

On perusal of record, it is revealed that it is clearly recorded in the order dated 14.05.2018 that copy of amended plaint was supplied to the learned counsel for defendant no. 3 on that date. It is also matter of record that after 14.05.2018, the matter remained at the stage of consideration on transfer and ultimately the same was received in the High Court on 06.07.2018. The matter was taken up by the undersigned on 13.07.2018 and the defendants were called upon to file the written statement to amended plaint.

Considering the overall facts and circumstances, I am of the view that no prejudice shall be caused to the plaintiff if some additional time is granted to defendant no. 3 for filing of written statement subject to suitable terms. Hence, in the interest of justice, the defendant no. 3 is granted two weeks time to file the written statement to amended plaint subject to cost of Rs.5000/- payable to plaintiff.

After receiving the copy of written statement, learned counsel for plaintiff may file replication within two weeks with advance copy to learned counsel for defendant no. 3.

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-3-

So far as other defendants are concerned, the record shows that the LRs of deceased defendant no. 1 were proceeded against ex-parte vide order dated 02.11.2001.

Defendant no. 2 was the husband of defendant no. 1 and he also expired subsequently and it was observed vide order dated 01.12.2014 that his LRs are already on record being LRs of defendant no. 1 and that they have already been proceeded against ex-parte.

Defendant no. 4 was husband of defendant no. 3 and during proceedings of the case, he also expired. On 28.05.2015, it was submitted on behalf of plaintiff that the defendant no. 4 was a formal defendant and he did not want the LRs of defendant no. 4 (whose wife is already on record being defendant no.3) to be impleaded in this case.

So, in these circumstances, the defendant no. 3 is the only contesting defendant and no other written statement is to be filed by the other defendants.

Let affidavit of admission/denial be filed by plaintiff and defendant no. 3 qua documents of each other alongwith written statement and replication respectively with copies exchanged.

Put up for completion of pleadings and admission/denial on 29.11.2018.

SANJAY JINDAL (DHJS)
JOINT REGISTRAR (JUDICIAL)

OCTOBER 26, 2018/pk