

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

+ **RFA (OS) No. 70/2007**

RESERVED ON :October 22nd , 2008

% DATE OF DECISION : November 11th , 2008

S. Balbir Singh

.....Appellant
Through: Mr. S.K. Sharma and
Mr. Dhruv Lumra,
Advocates.

Versus

Govt. of NCT of Delhi & Ors.

.....Respondents
Through: Ms. Zubeda Begum,
Advocate.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MR. JUSTICE MANMOHAN

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the digest? Yes

J U D G M E N T

MANMOHAN, J:

1. The present appeal has been filed for setting aside judgment dated 10th July, 2008 passed by the learned Single Judge in CS (OS) No. 156/2003 whereby the Appellant/Plaintiff's suit has been dismissed for non-prosecution on the ground that inspite of giving repeated opportunities to the Appellant/Plaintiff, he neither filed any evidence by way of affidavit nor appeared in Court to tender his evidence. In the present Appeal, there is also

a prayer that the learned Single Judge be directed to grant an opportunity to the Appellant/Plaintiff to lead his evidence.

2. Briefly stated, the facts of the present case are that the Appellant/Plaintiff filed a suit being CS (OS) No. 156/2003 for compensation and recovery of damages to the tune of Rs. 1.5 Crores on account of malicious prosecution of the Appellant/Plaintiff.

3. On 1st March, 2006 issues were framed and the Appellant/Plaintiff was directed to file affidavit of witnesses within eight weeks and the matter was listed before the Joint Registrar on 2nd May, 2006. On the said date, the Appellant/Plaintiff neither filed any affidavit by way of evidence nor its list of witnesses. A further opportunity of four weeks was granted to the Appellant/Plaintiff to comply with the directions. Even on the hearing held on 15th September, 2006, neither any affidavit nor list of witnesses was filed by the Appellant/Plaintiff. As a last opportunity, further time of four weeks was granted to the Appellant subject to deposit of costs of Rs. 3,000/- and the matter was adjourned to 1st December, 2006. However, on the said date neither the affidavits were filed nor the costs were deposited. In fact, the learned Counsel for the Appellant/Plaintiff, once again, sought further time of three months for filing affidavits on the ground that the Appellant/Plaintiff is an NRI and he apprehends arrest if he were to visit India. Last opportunity

was given to file the affidavit and the matter was adjourned to 15th March, 2007. On 15th March, 2007 the Appellant/Plaintiff still failed to file any affidavit by way of evidence, therefore, the Joint Registrar placed the matter before Court.

4. Learned Single Judge on 10th July, 2007 dismissed the suit for non-prosecution on the ground that the suit cannot be kept pending indefinitely and the Appellant/Plaintiff had given no good reason for not filing affidavits by way of evidence which could have been affirmed in U.K. where the Appellant/Plaintiff was residing. The relevant portion of the impugned order is reproduced hereinbelow :-

“.....sufficient latitude has already been given to the plaintiff to file the affidavits of evidence. It is trite to say that affidavits could have been affirmed in UK, where the plaintiff is stated to be based, and sent to India. The plaintiff cannot keep the suit pending for an indefinite period of time.

Dismissed for non prosecution.”

5. Learned Counsel for the Appellant/Plaintiff contended before us that in 1999, the Respondent Nos. 3 to 7 had physically and mentally tortured the Appellant/Plaintiff as well as his relative Mr. Sukhminder Singh and a false case had been registered against them at Police Station Kashmiri Gate vide FIR No. 279/1999 under Sections 3, 4 and 5 of the Explosive Substances Act read with Section 120B IPC. He stated that the Appellant/Plaintiff had remained in illegal custody from 23-24 June, 1999 till 27th March, 2002 when he was acquitted by the

Court of ASJ in Sessions' Case No. 4/2001. Learned Counsel contended that the Appellant/Plaintiff had not only filed the above suit for recovery of damages and malicious prosecution on the ground that he had been illegally detained and falsely charged/implicated by the Respondents, but he had also filed a Criminal Writ Petition bearing No. 507/2003 for a direction to the State to register a case and get the matter investigated from CBI. Learned Counsel also pointed out that the Appellant/Plaintiff's lawyer had written a letter dated 31st January, 2007 to the Secretary, Ministry of Home Affairs expressing an apprehension that the Appellant/Plaintiff would be arrested in a false case, the moment he lands in India. By this notice, the Government was also directed to inform as to whether the Appellant/Plaintiff can travel to India freely without any apprehension of arrest.

6. The Respondents have filed an affidavit stating that the entire record of Respondents' office had been checked and it was found that no communication was received on behalf of the Appellant/Plaintiff either seeking police protection or apprehending arrest. It was further submitted that the Appellant/Plaintiff was making false allegations without any basis or reasons only with a view to get his suit restored.

7. After hearing the parties, we are of the view that sufficient time and opportunity had been given to the Appellant/Plaintiff to file its evidence by way of affidavit. We are also unable to

understand as to how the alleged apprehension of arrest in India could have prevented the Appellant/Plaintiff from filing its affidavit by way of evidence in U.K. The Appellant/Plaintiff's version that it did not file an affidavit as he could not visit India due to apprehension that he would be arrested, does not inspire any confidence.

8. We asked learned Counsel for the Appellant/Plaintiff as to whether the Appellant/Plaintiff had resorted to any legal proceedings either to facilitate his return to India and/or to seek an anticipatory bail. Learned Counsel for the Appellant/Plaintiff fairly admitted that no such proceedings had been filed. We also asked the learned Counsel for the Appellant/Plaintiff as to whether the Appellant/Plaintiff had approached any statutory authority other than the letter dated 31st January, 2007 written by the Appellant/Plaintiff's counsel. Again learned Counsel for the Appellant/Plaintiff candidly admitted that there was no letter written by the Appellant/Plaintiff either directly to the police or any other statutory authority or the Indian High Commission seeking any facility for his return to India.

9. In our view, no suit can be allowed to be dragged on for an indefinite period as it causes harassment to the parties, specially the Respondents/Defendants in the present case.

10. Consequently, we are of the view that the order passed by the learned Single Judge is in accordance with law and does not call for any interference. The present appeal is dismissed but with no order as to costs.

MANMOHAN, J

MUKUL MUDGAL, J

NOVEMBER 11th, 2008
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