

1  
\$~

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

+ CS(OS) 249/2009 & I.A. 1689/2009

SRI SHARADA INSTITUTE OF  
INDIAN MANAGEMENT-RESEARCH ..... Plaintiff  
Through: Mr. Peeyoosh Kalra, Advocate with  
Mr. Sudhindra Tripathi and Ms. Sona  
Babbar, Advocates.

versus

SMT. RAKHEE NANDWANA BOHRA & ORS. .... Defendants  
Through: Defendant No.2 in person.

% Date of Decision : 15<sup>th</sup> May, 2015

**CORAM:**  
**HON'BLE MR. JUSTICE MANMOHAN**

### **J U D G M E N T**

**MANMOHAN, J: (Oral)**

1. In the present suit, issues were framed on 13<sup>th</sup> August, 2010. Till date, none of the plaintiff's witness has come forward for cross-examination. This is despite the fact that one of the plaintiff's witnesses was substituted at the plaintiff's request.
2. In the opinion of this Court, Order 17 Rule 3 CPC comes into play at this stage. The same is reproduced hereinbelow:-

“Order XVII

xxx

xxx

xxx

3. ***Court may proceed notwithstanding either party fails to produce evidence. etc.***—Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witness or to perform any other act necessary to the further progress of the suit, for which time has been allowed, [the Court may, notwithstanding such default,—

- (a) *if the parties are present, proceed to decide the suit forthwith, or*
- (b) *if the parties are, or any of them is, absent, proceed under rule 2].”*

3. Since the present suit is a suit for recovery of damages in addition to injunction and the onus for recovery as well as the injunction was on the plaintiff, which it has failed to discharge, this Court is of the view that the plaint has no merit.

4. At this stage, learned counsel for plaintiff states that the order dated 16<sup>th</sup> April, 2015 was not the order passed by the Joint Registrar. He states that the Joint Registrar has changed the order before signing it.

5. However, it is settled law that a Court including a Joint Registrar can change any order before he/she signs it. The Bombay High Court in ***State of Bombay Vs. Geoffrey & Co., AIR 1951 Bom 49*** has taken the view that unless the judgment is signed and sealed, it is not a judgment in strict legal sense and therefore, the order can be recalled and altered to a certain extent. The said view has been approved by the Supreme Court in ***Kushalbai Ratanbhai Rohit and Others Vs. State of Gujarat, (2014) 9 SCC 124***.

6. Further, this Court is of the view that it was the duty of the counsel for plaintiff to have inspected the Court file or downloaded the order sheet from the net which it seems was not done.
7. In any event, since in the present case there is a delay of five years in leading the evidence, which cannot be condoned by any stretch of imagination, the order of Joint Registrar has very little relevance.
8. Consequently, present suit and pending application are dismissed on merits on the ground that plaintiff has failed to prove its case. Registry is directed to prepare a decree sheet accordingly.

**MANMOHAN, J**

**MAY 15, 2015**

js