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

+ **FAO(OS) 196/2015**

MOHINDER KUMAR MEHRA ... Appellant
Through: Mr Arvind Nayar with Mr Sanad K. Jha and
Mr Sushant Kumar

versus

ROOP RANI MEHRA & ORS ... Respondents
Through: Mr Dinesh Kumar Gupta with Mr Vidit Gupta
for the Respondnt No.1 alongwith the respondent No.1
(in person)
Mr Gurmehar Sistani, Adv. for the Respondents 2 to 4.
Mr Rana S. Biswas with Mr Sunil Sharma
for the Respondent No.5.

CORAM:
HON'BLE MR. JUSTICE BADAR DURREZ AHMED
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER
% **28.04.2015**
CM No.7182/2015 (Condonation of Delay)

We have heard the counsel for the parties. The delay is condoned. This application stands disposed of.

FAO (OS) 196/2015 & CM Nos.7181 & 7183/2015

This case has gone through many twists and turns. It all started with an application being I.A. No.1001/2011 under order VI Rule 17, CPC which was moved by the appellant herein for amendment of the plaint. That application was not disposed of but, an order was passed on 26.07.2011 to the effect that the said application, in case it was allowed, appropriate orders for evidence of plaintiffs would be made. Another learned single Judge of this court referred to the said application in

his order dated 14.02.2014, where the learned Judge noted the contentions of the parties to the following effect:-

“The evidence of both the parties has been concluded. The matter has been listed for final disposal. Learned counsel for the plaintiff has pointed out the order dated 26th July, 2011 wherein observation was made that in case I.A. No.1001/2011 under Order VI Rule 17 CPC for amendment of the plaint is allowed, appropriate orders for evidence of the plaintiff would be made. As a matter of fact, plaintiff’s counsel stated that the parties have also led evidence in view of amendment sought in the plaint and the same covered in the evidence produced by the parties. The defendants, however, alleged that the said amendment was unnecessary and was opposed by the defendants and issue involved in the said circumstances be considered at the time of final hearing of suit as defendant No. 1 is more than 85 years old lady, the suit itself be decided.

List this matter in the category of ‘Short Causes’ on 22nd May, 2014.”

2. It will be seen from the above extract that the application was not expressly disposed of and the matter was listed in the category of “Short Causes”. However, an inference could have been drawn that the application was disposed of because of the statements made by the counsel for the parties. An inference could also be drawn that the application was not disposed of. In short, what we are saying is that the order dated 14.02.2014, in our view, is ambiguous.

3. To confound things further, the application (I.A. No.1001/2011) was taken up for hearing on 16.12.2014, when arguments were advanced by the counsel for the parties and orders were reserved. But, no order was pronounced.

4. The matter was listed on 29.01.2015, when the learned single Judge noted that the said I.A. had been taken up on 16.12.2014 for hearing. Surprisingly, it was also observed that the plaintiff did not pursue I.A. No.1001/2011 after 26.07.2011. This is factually incorrect because we have already adverted to the order dated 14.02.2104 where submissions were made by the counsel on both sides and thereafter, on 16.12.2014, when the matter was argued and orders were reserved. We also feel that the observation of the learned single Judge in the order dated 29.01.2015 to the effect that apparently none of the parties pressed for disposal of the application for amendment, is not correct. So, on the one hand, different learned single Judges of this court have been holding that the application is alive, whereas on the other, it has been noticed from some of the orders that the application has been treated as not having been pressed even though arguments had been addressed and orders were reserved.

5. The appellant has also impugned the order dated 09.02.2015 passed in I.A. No.2796/2015 which was an application for framing of additional issues. However, those additional issues would arise only if the application under Order VI Rule 17, CPC were to be allowed. Since the application under Order VI Rule 17, CPC has not been disposed of as yet, we feel that it would be appropriate if we set aside the orders dated 29.01.2015 and 09.02.2015 concerning the amendment application and the application for additional issues.

This would be in order to enable the learned single Judge to take a definitive view on the Order VI Rule 17, CPC application being I.A. No.1001/2011.

6. For this purpose, we direct that the matter be listed before the learned single Judge, in the first instance, on 30.04.2015. The learned single Judge shall dispose of the application under Order 6 Rule 17, CPC. In case the amendments are allowed, then the application under Order XIV Rule 5 CPC being I.A. 2796/2015 shall be taken up. In case the amendment application is disallowed, then obviously, there is no question of framing of any additional issues.

The appeal stands disposed of in the above terms.

Dasti.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

APRIL 28, 2015

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