

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

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Judgment Reserved on: 17th July, 2015

Judgment Delivered on: 22nd July, 2015

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FAO(OS) 371/2015

RAKESH KUMAR SACHDEVA

.....APPELLANT

VERSUS

PREM ARORA

....RESPONDENT

Advocates who appeared in this case:

For the Appellants:

Mr. A.K. Trivedi, advocate

For the Respondent:

Mr. Sajan K. Singh, Advocate

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

Cav. 702/2015

Since the caveator had entered appearance, the caveat is discharged.

C.M. No. 12288/2015 (Application for exemption)

Exemption is allowed, subject to just exception.

FAO (OS) 371/2015

1. This appeal arises out of order dated 15.04.2015 passed by a learned single judge of this court dismissing O.A. No. 128 of 2015 filed by the appellant. By the O.A., the appellant had impugned the order dated 09.02.2015 passed by the Joint Registrar closing the right of the appellant/Plaintiff to lead evidence.

2. On 09.02.2015, the case was listed for further cross-examination of the PW-1. (The Plaintiff in the suit and appellant herein). The Joint Registrar noted that the PW-1 was not present. The counsel for the plaintiff had submitted that the plaintiff had taken away the file and he was not in contact. The counsel for the plaintiff had submitted that he intended to seek discharge. The Joint Registrar noted from the previous order sheets that PW-1 was not present on previous dates of hearing also and accordingly the plaintiff's evidence was closed.

3. As is borne out from the impugned order, the Learned counsel for the appellant before the learned single judge in the appeal contended that the appellant did not appear before the joint registrar as he was in a state of shock as his mother had expired on 02nd January 2015.

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4. The Learned single judge noted that the counsel for the plaintiff had made a statement that the plaintiff had taken away his file. The single judge noted that the issues were framed on 26th September 2012 and the evidence of the plaintiff was partly recorded on 07th August 2013 and thereafter on one pretext or the other, the statement of PW-1 had not been concluded.

5. The learned single judge formed an opinion that there was an inordinate delay on the part of the plaintiff and it seems to be a part of the strategy to delay the disposal of the suit.

6. Normally a court is reluctant to pass orders shutting out the parties from leading evidence, however on some occasions the facts and conduct of a party force the hands of the court.

7. Present is a suit filed by the Appellant/plaintiff in the year 2011 for specific performance of an agreement to sell allegedly executed by the Defendant/Respondent. On 26.09.2012, the court directed that subject to the plaintiff furnishing a bank guarantee of Rs. 48,61,000/- within four weeks, the parties shall maintain status quo with respect to tile and possession of the suit property. The issues in the suit were also framed on the said date.

8. On 23.11.2012, as the plaintiff had failed to file the list of witnesses or the evidence by way of affidavit, an opportunity was

granted subject to payment of costs of Rs. 3,000/-. The Joint Registrar also noted that the bank guarantee was also not furnished. Counsel or the plaintiff submitted that the same would be furnished with an appropriate application.

9. The Plaintiff who entered the witness box as PW-1 was partly cross-examined on 07.08.2013. The plaintiff was directed to produce his income tax returns and statement of his bank account with effect from 2009. As noted by the learned single judge in the impugned order, thereafter on one pretext or the other the statement of PW-1 has not been concluded. PW-1 was not present on 26.05.2014, 03.11.2014 and on 09.02.2015.

10. Learned counsel for the appellant/plaintiff has admitted that the bank guarantee in the sum of Rs. 48,61,000/-, which was a pre – condition imposed for grant of a status quo order on 26.09.2012 was not furnished within the stipulated time and even till date has not been furnished.

11. We concur with the finding returned by the learned single judge that there is inordinate delay on the part of the plaintiff and it seems a part of the strategy to delay the disposal of the suit. Mere pendency of litigation in respect of a property diminishes its value, even though there may not be an interim order. A pending litigation in respect of a

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property is a deterrent on prospective purchasers. Even if there were no interim order, *lis pendens* by itself would create a cloud over the title in the minds of the prospective purchasers and would diminish the value of the property. The plaintiff is clearly attempting to take advantage of this situation, which cannot be permitted.

12. In view of the above, we find no merit in the appeal, the same is dismissed with costs quantified at Rs. 10,000/-.

CM 12287/2015 (Application for stay) & CM 12289/2015 (Application for condonation of delay of 26 days in filing the appeal).

Since we have considered and dismissed the appeal on merits, no orders are called for in these applications, the same are accordingly dismissed.

SANJEEV SACHDEVA, J.

JULY 22, 2015
HJ

BADAR DURREZ AHMED, J.