

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 16.11.2015

+ **FAO(OS) 626/2015**

RAMESH BALA MALHOTRA

... Appellant

versus

SUKSHAM KUMAR CHOPRA & ORS

... Respondents

Advocates who appeared in this case:

For the Appellant : Ms Surekha Raman
For the Respondent : Mr Naushad Ahmed Khan

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM 26650/2015

Allowed subject to all just exceptions.

CM 26652/2015

The delay in re-filing is condoned.

The application stands disposed of.

**FAO(OS) 626/2015 & CM 26649/2015 (stay) & CM 26651/2015
(condonation of delay)**

1. This appeal is directed against the order dated 06.08.2015 passed by a learned Single Judge of this Court in IA 21262/2014 filed on behalf of the

appellant/defendant. The said application was filed seeking a prayer that the documents, which had been filed by the plaintiffs/ respondents herein, be taken off the record in view of the order dated 31.05.2007 passed in Testamentary Case No. 9/1997.

2. It is the contention of the learned counsel for the appellant that the very same documents, which have been introduced along with the plaint by the plaintiffs in the present proceedings, i.e., arising out of CS(OS) 96/2009, had been rejected by the court by virtue of the said order dated 31.05.2007 in the other proceedings, i.e., Testamentary Case No. 9/1997. Therefore, according to the learned counsel, those documents ought to have been taken off the record, as prayed.

3. We do not agree with the submission made by the learned counsel for the appellant. First of all, the suit proceedings and the proceedings in the Testamentary Case No. 9/1997 operate in entirely different fields. Secondly, the reasons for not permitting the respondents to place those documents on record in Testamentary Case No. 9/1997 were that they were sought to be introduced at a very belated stage in those proceedings although the documents were old. The Court did not accept the explanation of the

respondents with regard to the delay in producing those documents in the said testamentary proceedings. The order passed by the learned Single Judge on 31.05.2007 in Testamentary Case No. 9/1997 is self-explanatory and reads as under:-

“% 31.05.2007

Present: Mr. Pramod Ahuja, Advocate for the Petitioner.
None for the respondents.

**+ IA 6927/07 (O. 8 R.1(A) CPC by respondents 2-4) in
Test.Cas.No. 9/1997**

This application has been filed by respondents no. 2 to 4 seeking to produce additional documents. Issues were framed on 30.11.1999. Evidence has been led thereafter by the parties. The substantive evidence has already been recorded of the petitioner.

In terms of the application, documents which are quite old are sought to be produced and other than merely making an averment that they were not earlier known to the respondents, there is no explanation forthcoming.

In my considered view, documents at this stage cannot be permitted to be brought on record. A party cannot choose to keep on filing documents at different stages of suit proceedings contrary to the provisions of the Code of Civil Procedure, 1908.

Dismissed.”

4. We may also point out that along with the evidence by way of affidavit Exhibit DW1/A, these documents, which are the subject matter of the present appeal, were sought to be exhibited. At the time of recording of

evidence of DW1 (Mr Suksham Kumar Chopra) in Testamentary Case No. 9/1997, the Joint Registrar had refused to take the same on record, as they had already been rejected by the Court by virtue of the order dated 31.05.2007, which, we have already extracted above. Thus, it is clear that the documents, which are being objected to in the present proceedings, had not been permitted to be introduced in the Testamentary Case No. 9/1997.

5. But, as observed by us above, the documents were not permitted to be introduced in those proceedings because of the belated stage at which they were sought to be introduced. Issues had been framed in that case on 30.11.1999 and substantive evidence had already been recorded. The Court also did not accept the explanation as to why they were being produced at that belated stage. However, the order dated 31.05.2007 would operate only insofar as the Testamentary Case No. 9/1997 is concerned. Insofar as the present proceedings are concerned, the said documents have been introduced along with the plaint and not at a belated stage. There is no reason as to why the said documents should be directed to be taken off the record.

6. We agree with the conclusion of the learned Single Judge. There is no merit in this appeal. The same is dismissed. The application for condonation of delay in filing the appeal as also the stay application also stand dismissed.

BADAR DURREZ AHMED, J

**NOVEMBER 16, 2015
SR**

SANJEEV SACHDEVA, J

