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

+ **FAO(OS) 576/2015 & C.M.Nos.23709-23711/2015, 32007/2015**

D K MODI

..... Appellant

Through: Mr.Anil Sapra, Sr.Adv. with
Ms.Jayashree Shukla Dasgupta,
Mr.Nilesh, Ms.Krithika Raghavan
and Mr.Abhirup Dasgupta, Advocates

versus

V K MODI

..... Respondent

Through: None.

AND

**FAO(OS) 577/2015 & C.M.Nos.23712-23714/2015 &
C.M.No.31990/2015**

D K MODI

..... Appellant

Through: Mr.Anil Sapra, Sr.Adv. with
Ms.Jayashree Shukla Dasgupta,
Mr.Nilesh, Ms.Krithika Raghavan
and Mr.Abhirup Dasgupta, Advocates

versus

U K MODI

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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21.12.2015

1. The appellant is aggrieved by an order of the learned Single Judge dated 12.08.2015. He had preferred applications i.e.O.A.No.226/2014 (in CS (OS) 2694/1998) and O.A.No.224/2014

(in CS (OS) 2712/1998. Essentially, the grievance articulated in these appeals is that the learned Single Judge fell into error by not interfering with the order of the Joint Registrar (Judicial) who had on 29.09.2014, closed the evidence of the appellant i.e. 4th defendant in CS (OS) 2694/1998.

2. It is urged that the record clearly indicates that the 4th defendant/appellant was never really given any opportunity and that only opportunity afforded to him was on 17.09.2012 to file affidavit of evidence. It is submitted that the appellant's preclusion in this regard has resulted in serious consequences inasmuch as his right to lead evidence has been foreclosed. Counsel further submits that even though an order of consolidation was made in 2009 the proceedings in each suit has taken their own course and sought to reinforce the submission by reference to earlier orders. It was also submitted that at one stage one of the suits (CS (OS) 1394/1996) was sought to be withdrawn. The Joint Registrar by his order dated 29.09.2014 noticed that in the previous order (dated 15.05.2014), the 4th defendant was given an opportunity to file an affidavit. The said order – of 15.05.2014 is on record. The following extract of the said order is relevant:

“....In terms of the order dated 17.9.2012 of the Hon'ble Court, the affidavit of witness had to be filed within 15 days of the said order. But no affidavit has been filed on 20.11.2012, 2.4.2013, 4.7.2013, 6.12.2013 and even up to today.....”

3. The Joint Registrar thereafter recorded that the matter was referred subsequently to the mediation centre. Apparently, since there

was no possibility of compromise, matter was received back. It was in these circumstances that on 29.09.2014, the Joint Registrar further stated as follows:

“The matter pertains to the year 1998 and it appears that the defendant no.4 is delaying the matter to the extent possible. Various opportunities including that last opportunity has been granted to defendant no.4 but he has not been able to comply with the directions of the Hon'ble Court. Accordingly, opportunity of defendant no.4 to lead evidence stands closed. As per record plaintiff's evidence has already closed. So far as evidence on behalf of other defendants is concerned, let the matter be taken up again at 3:00 PM to verify from the court record as to evidence of which defendant stands closed/concluded and which defendant still remains to lead its evidence....”

4. The learned Single Judge in the impugned order re-counted the previous circumstance, especially that on 29.04.2005, the order in CS (OS) 2694/1998 itself recorded a statement by parties that the matters could be proceeded without recording of oral evidence. The arguments too apparently were addressed from time to time. The court then noticed that the plaintiff in CS (OS) 1394/1996 and in CS (OS) 434/1998 sought leave to withdraw the suits which was opposed by the present appellant. On 10.05.2006, the plaintiff in the suits was permitted to withdraw the suits. The said judgment dated 10.05.2006 again reiterates that the matters were consolidated to be heard together. Apparently, on 26.07.2011, parties were again directed to indicate whether oral evidence was necessary or not. Since they indicated that it was necessary, they were afforded the opportunity.

The plaintiff did not avail of the opportunity. Consequently, last opportunity to file evidence was granted on 06.12.2013 in CS (OS) 2712/1998 and on 17.09.2012 in CS (OS) 2694/1998. The appellant too defaulted and ultimately its evidence was closed on 29.09.2014.

5. The above narration would show that the learned Single Judge took into account not only the appellant's conduct contemporaneously but also having regard to the previous conduct of the parties and the fact that the suits had been consolidated and to be tried together. The appellant clearly did not avail of the opportunities granted repeatedly – as can be seen from the order dated 29.09.2014 of the Joint Registrar. In these circumstances, this court is of the opinion that the appeals have no merit. The appeals and the pending applications are accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

DECEMBER 21, 2015

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