$~11

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

\+ CS(OS) 109/2014

SHWETA TIWARI ..... Plaintiff

Through: Mr.Sandeep Gupta, Adv.

versus

THE EDITOR-IN-CHIEF, AMAR UJALA AND CO. ..... Defendants

Through: MR.P.R. Rajhans with Mr.Neeraj Kapoor, Advs. For D-1.
Ms.Sonali Dhir, Adv. for D-4.
Mr.Sanjay S. Chhabra, Adv. for D-9.
Mr.Dhavish Chitkara with Ms.Shruti Baid, Advs. for D-10.
Ms.Taranum Cheema & Mr.Manvendra Singh, Advs. for D-11.
Mr.Chander Shekhar, Adv. for D-13.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

O R D E R

% 19.07.2016

OA No.83/2015 (chamber appeal by the defendant No.13 against orders dated 24.11.2014, 07.01.2015 and 13.02.2015 passed by the learned Joint Registrar)

1. Vide order dated 24.11.2014, the right of the defendant Nos.6, 12 and 13 to file the written statement was closed in view of the fact that the maximum period of 90 days prescribed in the CPC to file the written statement had expired. Instead of filing a Chamber Appeal against the order dated 24.11.2014, the defendant No.13 had appeared before the Joint Registrar on 07.01.2015, and stated that he had filed the written statement.

The Joint Registrar had observed in the said order that since the right of the defendant No.13 to file the written statement was closed on 24.11.2014, therefore, the same could not be taken on record. As a result, the written statement of the defendant No.13 was directed to be taken off the record.

2. Even after passing the order of 07.01.2015, the defendant No.13 did not take any steps to file a Chamber Appeal. Instead, after waiting for over a month, the defendant No.13 filed IA No.3175/2015 under Section 151 CPC, praying *inter alia* for setting aside the order dated 24.11.2014, whereunder his right to file the written statement had been closed. In his order dated 13.02.2015, the Joint Registrar held that the said application filed by the defendant No.13 was not maintainable in view of the specific provisions under Order VIII Rule 1 CPC. It was also observed that if the defendant No.13 is aggrieved by the order passed by the Joint Registrar, he had a remedy available in law, but recourse could not be taken to Section 151 CPC. As a result, the aforesaid application was also dismissed.

3. The present Chamber Appeal came to be filed by the defendant No.13 on 02.03.2015, for seeking setting aside of all the three orders mentioned above, i.e., the order dated 24.11.2014, whereunder the right to file the written statement was closed, the order dated 07.01.2015 when the written statement was filed by the defendant No.13 without a supporting application for condonation of delay and without filing a Chamber Appeal for setting aside the order dated 24.11.2014 and finally, the order dated 13.02.2015, whereby an application filed by the said defendant under Section 151 CPC, for setting aside the earlier order dated 24.11.2014, was dismissed by the Joint Registrar.

4. Learned counsel for the plaintiff contends that the defendant No.13 cannot be permitted to club the three impugned orders and file a common Chamber Appeal and that too without an accompanying application for seeking condonation of delay in respect of each of the orders sought to be assailed. He states that even if the present appeal is confined to the latest order dated 13.02.2015, passed by the Joint Registrar, the statutory period of 15 days available for filing a Chamber Appeal would have expired on 01.03.2015, whereas the present appeal was filed by the defendant No.13 on 02.03.2015 and that too, without asking for condonation of delay.

5. As for the other two orders dated 24.11.2014 and 07.01.2015, it is stated on behalf of the plaintiff that no worthwhile explanation for the inordinate delay in filing the written statement has been offered by the defendant No.13 and nor has an appropriate application been filed in that regard to explain as to how the present Appeal can be entertained in respect of the orders passed on 24.11.2014 and 07.1.2015, without praying for condonation of delay.

6. Mr.Chander Shekhar, learned counsel appearing for the defendant No.13 seeks to explain that the previous counsel engaged by his client in the present case had fallen ill and had gone out of town for treatment due to which he could not file the written statement within the prescribed period or for that matter, the extended period of 90 days. He states that he has filed an affidavit of the previous counsel along with the Chamber Appeal, marked as Annexure D-2, and he has explained the said position in clear terms.

7. The affidavit filed by the previous counsel has been perused by this court, but it can not be of any assistance to the defendant No.13 for the

reason that Shri D.K. Thakur, Advocate previously appearing for the defendant No.13 has stated therein that he had appeared in the case on 15.04.2014 when time was granted to file the written statement, but he had fallen ill in May 2014 and gone to Haridwar where he had remained for undergoing treatment for five months. The records however reveal that the written statement was filed by the defendant no.13 only on 06.1.2015, i.e. after a period of four months if calculated from Sept., 2014.

8. The records reveal that the defendant No.13 was served with the summons in the suit on 20.02.2014. The prescribed period of 30 days available for filing the written statement would have expired on 20.03.2014. The extended period of 30 days reckoned from 20.03.2014, would have expired on 20.04.2014 and the maximum period of 90 days reckoned from 20.2.2014, would have expired on 20.05.2014. Assuming that what is stated in the appeal to be correct and accepting for a moment that the previous counsel had fallen ill and he remained at Haridwar for under going treatment for a period of five months, the said period would have expired in the month of September, 2014 whereas the written statement came to be filed by the defendant on 6.1.2015. There is not a whisper in the Chamber Appeal as to the steps taken by the defendant No.13 during the period between October, 2014 till the beginning of January, 2015, to explain non filing of the written statement till 6.1.2015. Quite apparently, the defendant No.13 is an indolent litigant who has failed to act diligently and pursue his case properly.

9. In these circumstances, reliance placed on the contents of the affidavit of the previous counsel engaged by the defendant No.13 is not considered adequate, to explain the inordinate delay in filing the written statement by

the defendant No.13. In view of the facts and circumstances of the case as noted above, this Court is of the opinion that there is no illegality, arbitrariness or perversity in the impugned orders dated 24.11.2014, 07.01.2015 and 13.02.2015 passed by the Joint Registrar for interference.

10. Accordingly, the Chamber Appeal is dismissed, as being devoid of merits.

CS(OS) 109/2009

1. As per order dated 29.03.2016, the suit has been directed to be transferred to the Court of the learned District and Sessions Judge (Central), Tis Hazari Courts, Delhi on account of enhancement of the pecuniary jurisdiction of this Court and the parties have been directed to appear before the said Court on 5th August, 2016. Due to paucity of time for transmitting the case file, the said date is changed.

2. The parties are now directed to appear before the concerned Court on 29th August, 2016. The Registry shall ensure that the case file is transferred at the earliest.

HIMA KOHLI, J

JULY 19, 2016
gm/ap