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

+ RFA 174/2016

RAJEEV PD. DUBE

..... Appellant

Through: Mr. Hargovind Jha & Mr. S.S. Jain,
Advs.

Versus

SHOBHA DUBE & ORS

..... Respondents

Through: Ms. Arundhati Katju & Mr. Ali
Chaudhary, Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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23.05.2016

1. This order is in continuation of the orders dated 28th March, 2016, 21st April, 2016 and 19th May, 2016.
2. The counsel for the appellant today states that the appellant on 7th January, 2009 had withdrawn the suit only on behalf of the other plaintiffs as whose attorney he had also filed the suit and had not withdrawn the suit on his own behalf. In support thereof copy of the proceedings before the Trial Court on 7th January, 2009 are handed over in the Court and in which the statement of the appellant is recorded are as under:

“Statement of sh. Rajeev Prashad Dube S/o Late Sh. Ajeet Prashad Dube, aged 65 years, R/o 28, Central Lane, New Delhi-1.

On S.A.

I am one of the plaintiffs in this case. I am the holder of power of attorney on behalf of plaintiff nos.4,5,6,8 and 9. The suit has been filed under my signature. I have brought the original power of attorneys executed by them in my favour. I file the same on the judicial file.

I withdraw the suit. The same may be dismissed as withdrawn leaving the parties to bear their own costs.

Sd/-
Rajeev Prashad Dube

Sd/-
(N.K. Goel)
ADJ-15 (Central)/Delhi
7-01-09”

3. Though from the statement of the appellant / plaintiff it is abundantly clear that he was withdrawing the suit not only on his own behalf but also on behalf of the other plaintiffs as whose attorney he had filed the suit, but a perusal of the trial court record otherwise also establishes the dishonesty of the contention raised today.
4. On 7th January, 2009, after recording of the statement besides of the appellant herein, also of Sh. Anil Prashad Dube another plaintiff and of the then sole defendant Sharad Dube, the suit was dismissed as withdrawn.
5. If the contention as urged on behalf of the appellant, of the appellant / plaintiff having withdrawn the suit only on behalf of the other plaintiffs and not on his own behalf was correct, the question of the entire suit being dismissed as withdrawn on 7th January, 2009 would not have arisen. I may record that the order dated 7th January, 2009 of dismissal as withdrawn of the suit also records the presence of appellant/plaintiff.
6. The trial court record further shows that thereafter two applications came to be filed, one for revival of the suit purportedly on behalf of the plaintiffs no.1 to 3 but supported only by the affidavit of Tarun Dube and the other on behalf of the appellant/plaintiff to allow him to enter into the suit in his previous position as the plaintiff no.7.

7. Both the applications were dismissed vide order dated 9th December, 2010 on the ground that the suit having been dismissed as withdrawn could not be revived.

8. Against the aforesaid order, Tarun Dube preferred CRP No.39/2012 and which was allowed vide order dated 30th April, 2013 observing that Tarun Dube had not given his consent for withdrawal of the suit and hence his application for revival of the application of the suit ought to have been allowed.

9. As already recorded in the previous order dated 19th May, 2016, the appellant/plaintiff herein independently preferred CM(M) No.749/2011 impugning the aforesaid order dated 9th December, 2010 and which was dismissed vide order dated 8th July, 2011.

10. Thus, as far as the appellant/plaintiff is concerned, the withdrawal of suit attained finality and the appellant/plaintiff today is mischievously and in abuse of the process of the Court contending that he had on 7th January, 2009 not withdrawn the suit on his behalf but had withdrawn the suit only on behalf of other plaintiffs as whose attorney also he was pursuing the suit.

11. The mere fact that the learned Additional District Judge (ADJ) in pursuance to the order dated 30th April, 2013 in CRP No.39/2012 preferred by Tarun Dube also allowed the appellant to participate and / or noted the presence of the appellant would not undo what had been done vide orders dated 7th January, 2009 and 9th December, 2010 in the suit and vide order dated 8th July, 2011 in CM(M) No.749/2011 preferred by the appellant and the said error on the part of the learned ADJ would not vest any right in favour of the appellant/plaintiff.

12. The appellant having withdrawn from the suit cannot now challenge the dismissal of the suit which was pursued by another plaintiff.

13. The appeal is misconceived and the appellant is found to be abusing the process of this Court and is burdened with costs of Rs.50,000/- payable to the Delhi High Court Bar Association Lawyers' Social Security and Welfare Fund, New Delhi within eight weeks of today.

14. The file of RFA No.97/2016 requisitioned along with the trial court record attached thereto be returned to the Registry.

RAJIV SAHAI ENDLAW, J

MAY 23, 2016

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