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

+ **CS(OS) 117/2005**

S.HARIPAL SINGH & ANR. Plaintiffs

Through: Mr. Mohinder J.S. Rupal & Ms.
Simran Jeet, Advs.

Versus

UOI & ANR. Defendants

Through: Mr. Kirtiman Singh, Mr. Waize Ali
Noor, Mr. Prateek Dhanda & Mr.
Pranav Agarwal, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **08.11.2016**

1. This order is in continuation of the earlier order dated 5th October, 2016.
2. The position today remains the same as on 5th October, 2016.
3. The counsel for the plaintiffs states that the plaintiffs be granted adjournment to move an appropriate application. It is also stated that no Issue of limitation has been framed in the suit. It is yet further stated that it is not as if the plaintiffs have not led any evidence; the plaintiffs had tendered in evidence the affidavit by way of examination-in-chief of one of their witnesses and who also was partly cross-examined.
4. The counsel for the defendant no.1 Union of India (UOI) states that the said witness of the plaintiffs stopped appearing and no other witness was examined and hence the evidence was closed.

5. The position in law would remain the same, as of the plaintiffs not leading any evidence. If the plaintiffs wanted to make any application, the same should have been done between the last date i.e. 5th October, 2016 and today.

6. The counsel for the plaintiffs states that the application could not be filed because the file from the earlier counsel was not received and was received yesterday only.

7. In this suit for recovery of Rs.7,21,10,248/- towards interest, the following Issues were framed on 9th February, 2007:

- “(1) Whether in the absence of any contract, express or implied between the plaintiff and defendant, the plaintiff is entitled to any interest? OPP.
- (2) Whether the plaintiff is estopped from filing the present suit? OPD.
- (3) Whether the guidelines of 1995 will be applicable to the plaintiff? OPP.
- (4) Whether the plaintiff is entitled to the relief, interest charge, bank charges etc., as claimed in the suit? OPP
- (5) Relief.”

and the matter set down for trial.

8. The plaintiffs by 22nd May, 2007, when the suit was posted for cross-examination, did not file any affidavits by way of examination-in-chief and the matter was adjourned to 16th November, 2007. By 16th November, 2007 also no affidavits by way of examination-in-chief were filed and on request of the counsel for the plaintiffs, the suit was adjourned to 14th March, 2008.

9. Yet again no affidavits by way of examination-in-chief were filed and a final opportunity was granted to the plaintiffs to file affidavits by way of examination in chief within four weeks.

10. Thereafter the matter remained pending on the application of the plaintiffs under Section 65 of the Evidence Act, 1872 and which application also I may record was misconceived inasmuch as it is the settled position in law (see *Prem Chandra Jain Vs. Sri Ram* 2009 (113) DRJ 617 and *Sanyogta Prakash Vs. Dhira Bala Malhotra* 2010 (115) DRJ 109) that no such application is required to be filed.

11. On 23rd March, 2011, though the affidavit by way of examination-in-chief of PW-1 was tendered but PW-1 had not brought the records and hence recording of cross-examination was deferred. On 30th March, 2012, it was informed that PW-1 whose affidavit by way of examination-in-chief had been tendered had left the plaintiffs and he was sought to be substituted.

12. Thereafter on 12th September, 2012, the affidavit by way of examination-in-chief of the substituted PW-1 was tendered in evidence and he was partly cross-examined on 12th September, 2012. Thereafter on 18th March, 2013, PW-1 failed to appear; he was further cross-examined on 19th March, 2013 and 20th March, 2013 and 4th February, 2016.

13. On 26th April, 2016 and 28th April, 2016 none appeared for the plaintiffs and accordingly the plaintiffs' evidence was closed and the suit posted on 23rd August, 2016 for defendants evidence.

14. On 23rd August, 2016 also none appeared for the plaintiffs and the counsel for the defendants stated that since the plaintiffs have not led their evidence, the defendants also did not need to lead evidence and accordingly, the matter was placed before this Bench on 5th October, 2016.

15. The order dated 28th April, 2016 of closure of evidence of the plaintiffs has attained finality and in the light thereof the suit has to be dismissed on the ground of the plaintiffs having failed to lead any evidence on the Issues No.1,3 and 4, onus whereof was on the plaintiffs.

16. The suit is accordingly dismissed. However no costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

NOVEMBER 08, 2016

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