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

+ **FAO(OS) 525/2015**

RAJIV RANA & ORS

..... Appellants

Represented by: Mr.Rakesh Tiku, Sr.Advocate
instructed by Mr.Satinder
Singh, Advocate.

versus

OM PRAKASH GUPTA & ORS

..... Respondents

Represented by: Ms.Vasundhara Bhardwaj,
Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

08.02.2016

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1. A comedy of error has resulted in a travesty of justice. Respondent No.1, Om Prakash Gupta, instituted a plaint impleading Vijender Kumar and Atul Kumar Gupta as defendant Nos.1 and 2. These two gentlemen have been impleaded as respondent Nos.2 and 3 in the appeal.
2. After some time respondent No.1, Om Prakash Gupta, the plaintiff of the suit realised that as laid, the suit may fail. An application was filed under Order 1 Rule 10 read with Order 6 Rule 17 of the Code of Civil Procedure which was registered as I.A. No.13434/2011.
3. Listed before the learned Joint Registrar on August 26, 2011 notice was issued to the non-applicants as also the proposed defendants sought to be impleaded, who we note are the appellants.
4. This application was filed along with the plaint in as much as the plaint had to be instituted keeping in view the order passed by the learned

Additional Civil Judge on February 19, 2011 returning the plaint, and the plaintiff realised that the plaint as originally filed required to be amended.

5. The appellants, at that stage proposed impleadment of defendants 3 to 5 with pleadings to be incorporated. The proposed defendants were served and entered appearance on February 21, 2012. Seeking time, they were granted time to file a reply.

6. Reply was filed. Proceedings lingered on. The date of March 24, 2014 arrived. By consent the application was disposed of but limited to impleadment of appellants as defendant Nos.3 to 5. It was recorded by the learned Joint Registrar that the application has been filed under Order 1 Rule 10 of Code of Civil Procedure. It was recorded that the prayer made in the application was seeking impleadment of the appellants as defendant Nos.3 to 5.

7. Regretfully, nobody informed the Court that the application was a composite application. Part-I prayer was to implead appellants as defendant Nos.3 to 5. Part-II prayer was to amend the plaint.

8. The appellants did not file a written statement resulting in an order being passed by the learned Joint Registrar on February 02, 2015 to the effect that since written statement has not been filed the right to file the same is closed. Reason not recorded, appears to be apparently that the requirement of law to file a written statement within 30 days of summons in the suit being served. Chamber appeal filed on May 21, 2015 has been dismissed by the learned Single Judge.

9. Regretfully, neither the learned Joint Registrar nor the Single Judge noted that there was no plaint making any averments against the appellants which needed to be rebutted. Original plaint had no averments against them.

It was the plaint as proposed to be amended which contained the averments against the appellants and unless said plaint was taken on record post amendment being allowed there was no occasion for the appellants to be called upon to file a written statement.

10. In view of the backdrop facts noted hereinabove and for which we have the benefit of the suit file before us, to do justice we dispose of the appeal setting aside the impugned order dated May 21, 2015 as also the order dated February 02, 2015 passed by the learned Joint Registrar. We restore I.A.No.13434/2011 for adjudication on merits.

11. The attention of the learned Trial Judge or the learned Joint Registrar would be drawn by the parties to the fact that vide I.A.No.13434/2011 a composite prayer was made; to implead the appellants as defendant Nos.3 to 5 as also to amend the plaint.

12. No costs.

CM No.20638/2015 (Stay)

Application is dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

FEBRUARY 08, 2016
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