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

+ CC No.4/2021 in CS(OS) 1984/2015

AJAY BHATIA

.... Plaintiff

Through: Mr. Rajat Aneja & Ms. Alka
Dwivedi, Advs. plaintiff/counter-
claimant

versus

ANIL BHATIA & ORS

..... Defendant

Through: Mr. Arun Vohra &, Adv. for D-1
(appeared through VC)
Mr. Neeraj Sharma, Adv. for D-2
& D-3 (appeared through VC)

CORAM:

**JOINT REGISTRAR (JUDICIAL) SH. MANISH
SHARMA, (DHJS)**

ORDER

02.09.2024

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**I.A.No.11368/2023 (under Section 151 CPC filed on
behalf of counter-claimant seeking recall of the order
dated 22/03/2023 in terms of and in compliance of order
dated 11/05/2023 passed by the Hon'ble Court in OA
No. 52/2023)**

1. The present application has been filed on behalf of the counter-claimant seeking recall of the order dated 22/03/2023 in terms of and in compliance of order dated 11/05/2023 passed by the Hon'ble Court in OA No.52/2023.
2. It is averred in the application that vide order dated 22/03/2023 written statement of the defendant no.3 to



the counter-claimant was taken on record and aggrieved with the said order, the counter-claimant has preferred an OA No.52/2023. It is further averred that the main grievance of the counter-claimant is that on 22/03/2023, when IA No.4081/2023 & I.A.No.4082/2023 came up for hearing, the applicant/counter-claimant no.1 appeared through VC whereas Ms.Preksha Jain, proxy counsel appeared physically before the Court. It is averred that the proxy counsel appearing on behalf of the counter-claimant did not give any 'No Objection' for allowing the aforesaid application bearing IANo.4081/2023 seeking condonation of delay in filing the written statement of the defendant no.3 to the counter-claim and also application bearing IA No.4082/2023 seeking condonation of delay in re-filing.

3. It is averred in the captioned IA that in view of the aforesaid circumstances, the applicant has preferred an O.A.No.52/2023, which was listed before the Hon'ble Court on 11/05/2023. It is further averred that the Hon'ble Court was pleased to dispose of the said O.A. by way of following order:

O.A. 52/2023

2. One of the grievances in the present appeal of the appellant is that the consent of the learned counsel appearing for the appellant for condoning the delay in filing of the written statement by the defendant no.3 has been wrongly recorded in the order dated 22.03.2023.

3. In my view, for such an averment, it would be appropriate for the appellant to first move the Court of the learned Joint Registrar (Judicial) which passed the impugned order.

4. The appeal is accordingly disposed of giving liberty to the appellant to file an appropriate



application before the learned Joint Registrar (Judicial).

5. It is made clear that in case the appellant is aggrieved of the order passed by the learned Joint Registrar (Judicial) on such application, it shall be open to the appellant to challenge the order impugned in the present appeal along with the said order, in accordance with law.

6. It is also made clear that this Court has not expressed any opinion on the merits of the averments made in the appeal.

7. The appeal is accordingly disposed of.

4. It is averred that in view of these facts and circumstances, the applicant seeks recall of the order dated 22/03/2023 on the ground that in the order dated 22/03/2023, 'No objection' of the counsel for the applicants/counter-claimants was wrongly recorded. It is further averred that there was no occasion for the counsel for the applicant/counter-claimant to tender 'No objection' for allowing applications bearing I.A.No.4081/2023 & I.A.No.4082/202, inasmuch as, even though one of the application i.e. I.A.No.4081/2023 (for condonation of delay for filing written statement) purportedly referred to a delay of about 33 days, however the other application bearing I.A.No.4082/2023 sought condonation of delay of 315 days in re-filing, if reckoned from the date of 06/04/2022, until 15/02/2023.

5. It is averred that order dated 22/03/2023 is required to be recalled in view of the conduct of the defendants/non counter-claimants. It is further averred that present suit was filed in the year 2015 and counter-claim of the applicant/counter-claimant could be filed in August,



2021 because no steps were taken by the original plaintiff/defendants herein, to serve the applicants/counter-claimants, who were arrayed as defendant no.3 & 4. It is averred that the applicants/counter-claimants were served only in April, 2021 only after a settlement between the plaintiff and defendant nos.1 & 2 being siblings.

6. It is averred that the applicants/counter-claimants have filed the present counter-claim bearing Counter-Claim No.4/2021. It is further averred that the defendant no.3 was duly served with the summons of the counter-claim on 17/01/2022. It is averred that there is a delay of more than 315 days in filing the written statement to the counter-claimant by defendant no.3. It is further averred that since Proxy counsel appearing for the counter-claimants on 22/03/2022 did not give 'No Objection' with respect to allowing the applications bearing IA No.4081-82/2023 for condoning the delay in filing written statement, in fact, she sought time to file detailed reply to the said IAs.
7. Learned proxy counsel for the applicant/counter-claimants has also filed an affidavit in this regard.
8. Reply to the captioned IA has also been filed on behalf of the defendant no.3 to the counter-claim. It is averred that learned counsel for the defendant no.3 has given "No Objection" if delay in filing written statement of defendant no.3 is condoned subject to cost. It is denied that learned counsel for the counter-claimant sought any time to file detailed reply to the applications of defendant no.3. It is further averred that defendant no.3



made the payment of Rs.5,000/- as cost through UPI mode in the account of counter-claimant.

9. The applicants/counter-claimants have also filed rejoinder reiterating the averments made in the application. In addition, it is averred that the applicants have returned back the cost of Rs.5,000/- to the account from which the said amount was credited to his account.

10.Arguments heard. Record perused.

11.The main argument of learned counsel for applicant/counter-claimant is that the learned proxy counsel appeared on behalf of the applicant/counter-claimant on 22/03/2023 did not give 'No Objection' for allowing the applications i.e. I.A.No.4081/2023 (for condonation of delay for filing written statement) and the other application bearing I.A.No.4082/2023 sought condonation of delay of 315 days in re-filing, in fact sought time to file detailed reply to these applications. On the other hand, learned counsel for defendant no.3 had refuted the argument made on behalf of applicant/counter-claimant and submitted that counsel appeared for applicant/counter-claimant had given her 'No Objection' for condoning the delay in filing written statement subject to payment of cost.

12.Learned counsel for defendant no.3 has filed his affidavit stating therein that on 22/03/2024, learned counsel for counter-claimant had appeared before this Court and gave her No Objection with respect to allowing the application of defendant no.3 seeking condonation of delay in filing the written statement.

13.I am of the opinion that learned counsel for the



applicant/counter-claimant had appeared before this Court physically whereas applicant/counter-claimant had joined the court proceedings through video conference and learned counsel for defendant no.3 had also joined the court proceedings through video conference. Learned counsel for the applicant/counter-claimant had given her consent/No objection for allowing the applications i.e. I.A.No.4081/2023 (for condonation of delay for filing written statement) and the other application bearing I.A.No.4082/2023 sought condonation of delay of 315 days in re-filing. Only after furnishing 'No Objection' on behalf of the applicant/counter-claim, this Court allowed the aforesaid two applications subject to payment of cost.

14.The contention of learned counsel for counter-claimant that on 22/03/2023, regular steno was on leave and there might have been a possibility that the substitute steno was not able to type the order correctly is not tenable as the order was passed and signed by this Court after hearing submissions of counsels for the parties and thoroughly going through the records of the case.

15.It is a regular practice that proxy counsel appears on instructions of the main counsels and make submissions on their behalf. It cannot be presumed that learned proxy counsel for the counter-claimant had appeared before the Court and gave his/her 'No Objection' with respect to allowing any application without taking proper instructions from main counsel appearing in the matter. Further cost was imposed in presence of the counter-claimant and the counsel, which obviously mean that the



delay was condoned.

16. Now at this stage, learned counsel for the applicant/counter-claimant after giving 'No Objection' for allowing the applications for condonation of delay in filing/re-filing written statement by defendant no.3, cannot be permitted to withdraw his/her 'No Objection' furnished before the Court. Accordingly, the contention of learned counsel for the applicant/counter-claimant that 'No Objection' was not furnished on behalf of the applicant/counter-claimant is declined.

17. With the aforesaid observation, the captioned IA stands disposed of.

CC No.4/2021

18. The matter is at the stage of completion of pleadings and admission/denial of documents.

19. 'Joint Document Schedule' in terms of Rule 7A Chapter VII of Delhi High Court (Original Side) Rules, 2018 be filed at least a week prior to the next date. A hard copy of the Joint Document Schedule, in addition to e-filing, be also filed.

20. Re-notify the matter for completion of pleadings and admission/denial of documents on **08th October, 2024**.

MANISH SHARMA, (DHJS)
JOINT REGISTRAR (JUDICIAL)
SEPTEMBER 2, 2024/nk

Click here to check corrigendum, if any