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

+ **FAO(OS) 79/2016**

Date of decision: 16th May, 2017

M/S MS SHOES EAST LTD.

..... Appellant

Through Mr. G.P. Thareja, Advocate alongwith
Mr. Pavan Sachdeva, CMD in person.

versus

ANAND KHANDELWAL & ORS.

..... Respondents

Through Mr. Sanjeev Anand & Mr. Akshay
Kapoor, Advocates for respondent Nos. 2 to 4.

Ms. Shashi Panwar, Advocate for respondent Nos.
7 & 10.

Counsel for Mr. Lalit Kumar, Advocate for
respondent No. 9.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

SANJIV KHANNA, J. (ORAL):

This intra-Court appeal under Section 10 of the Delhi High Court Act, 1966 partly impugns the order dated 8th January, 2016 whereby IA Nos. 7591/2006 and 9204/2007 in CS(OS) No. 1005/1998, *M/s M.S. Shoes East Limited versus Anand Khandelwal* have been disposed of. The contention is that legal representatives of Anand Khandelwal should be brought on record.

2. The appellant herein, the plaintiff, had filed the aforesaid applications in the suit which seeks decree of Rs.2,34,44,300/-. The suit was filed against Anand Khandelwal on 20th March, 1998. Anand Khandelwal had

expired before he could be served, on 27th October, 1999.

3. The appellant had earlier filed IA No. 11960/1999 under Order XXII, Rule 4 of the Code of Civil Procedure, 1908 (Code, for short) for bringing on record legal representatives of Anand Khandelwal, namely, Ajay Khandelwal. This application was dismissed vide order dated 25th March, 2008, inter alia, recording that Anand Khandelwal had not executed the Memorandum of Understanding dated 1st November, 1994 pursuant to which money was paid, in his personal capacity but in his representative capacity as the managing trustee. The order refers to the definition of the expression “legal representative” in Section 2(11) of the Code, and the submission that Ajay Khandelwal should be impleaded as a party being a legal representative or an inter-meddlor in the estate. The contention was specifically rejected holding that the “property” had not devolved on Ajay Khandelwal nor he was the legal heir of the trust, which trust would continue to subsist /survive irrespective of the demise of Anand Khandelwal. This order specifically records that the plaintiff, i.e., the appellant had not sought relief against Anand Khandelwal in his personal capacity.

4. The appellant had accepted the order dated 25th March, 2008 and states that he has not challenged or questioned the said order.

5. In these circumstances, we find it difficult to accept the contention of the appellant that legal representatives of Anand Khandelwal should have been impleaded as a party in the second applications filed by him in 2006. The earlier order dated 25th March, 2008 would prohibit and bar the appellant from raising the said contention. In fact, IA Nos. 7591/2006 and 9204/2007 should have been disposed of, then.

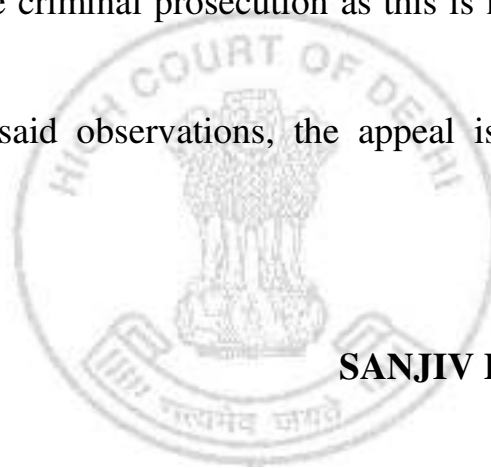
6. The impugned order passed by the single Judge impleads Mausmi

Bhattacharya and Mahesh Sharma, trustees of Ram Charitable Trust, as defendants. The aforesaid directions are in consonance with the provisions of Order XXXI of the Code.

7. No other contention or issue is raised by the appellant during the course of arguments. He submits that he is not pressing the other prayers or grounds raised, in view of limitation.

8. We clarify that in this appeal we have dealt with a limited issue and have not examined and expressed any opinion on other aspects, which are pending trial. We also clarify that we are not required to express any opinion relating to the criminal prosecution as this is not the subject matter of the present appeal.

9. With the aforesaid observations, the appeal is dismissed, with no order as to costs.



SANJIV KHANNA, J.

PRATHIBA M. SINGH, J.

MAY 16, 2017
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