

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

Reserved on: 19.12.2016

% **Decided on: 16.01.2017**

+ **CS(OS) 1334/2013, I.A. 15534/2013**

NEENA DUGAL

..... Plaintiff

Through: Mr. Aditya Madan, Advocate along
with Mr. Kulees and Mr. Gautam
Gupta, Advocates.

versus

INDER PAL SINGH ANAND AND ANR

..... Defendants

Through: Mr. Sandeep Sethi, Sr. Advocate
along with Mr. Kamaldeep Dayal
and Mr. Anish Kapur, Advocate for
defendant no. 1.

Mr. Udaibir Singh Kochar, Advocate
along with Ms. Jagriti Ahuja,
Advocate for defendant no.2.

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

I.A.18297/2013 (for condonation of delay in filing O.A. against Order dated 27.09.2013) & O.A.143/2013 (against Order dated 27.09.2013)

1. The present suit had been filed by Ms. Neena Dugal against her siblings defendants no.1 and 2 for partition, mandatory and permanent injunction. She had given her residential address as 10A, Bellfield Avenue, Harrow, HA3, 6SX, London. An interim stay was granted in her favour vide order dated 10.07.2013 whereby the defendants were restrained from

selling, alienating or parting with possession of the property. The interim stay order was in her favour in respect of roof rights above first floor of A-9114, Vasant Vihar, New Delhi.

2. During the proceedings, the defendant no.1 had moved an application i.e. CrI.M.A.12538/2013 under Section 340 of the Criminal Procedure Code (Cr.P.C.). The defendant no.1 had objected that the plaint and other documents filed on behalf of Ms.Neena Dugal were not bearing her signatures because she was not present in India on the date these documents were signed. This court vide order dated 23.08.2013 had issued notice to UOI to confirm from its record the date on which Ms.Neena Dugal had left for London in May, 2013. Subsequently, defendant no.2 after putting appearance moved an application i.e. I.A. 15534/2013 on the ground that till enquiry ordered by the court on the application filed under Section 340 Cr.P.C. defendant no.2 should be exempted from filing written statement. This application was put up before the Joint Registrar. It was on this application that the Joint Registrar passed the following order on 27.09.2013:

“Counsel for the plaintiff accepts notice and submits that application is on the premise that plaintiff was not available in India on the date when the suit was filed and that pleadings do not appear his signatures.

Counsel for the plaintiff submits that in order to obviate any technical objection, he would be filing fresh plaint and applications, affidavit, etc. of the plaintiff duly attested by the High Commission of India in U.K., and he is not to file any separate reply.

Counsel for the defendant submits that he reserves his right to address before the Hon'ble Court on 31 October, 2013.

Without prejudice to his rights and contentions, plaintiff would be at liberty to file fresh plaint together with the application, affidavit in support thereof.

List the matter before the Hon'ble Court for further directions on 31st October, 2013, the date already fixed."

3. Defendant no.1 initially moved an application i.e. I.A.17344/2013 before the Joint Registrar for the recall of this order. However, the same was withdrawn by him on 11.11.2013 reserving his right to file an appeal against the said order. Subsequently, the present O.A. has been filed along with I.A.18297/2013 for condonation of delay on 11.11.2013.

4. It is submitted that the impugned order dated 27.09.2013 was not passed in his present. The applicant has submitted that he became aware of the order dated 27.09.2013 only on 25.10.2013 when the inspection of the record was done as the court date was approaching. It is submitted that immediately I.A.17344/2013 had been moved but since the learned Joint Registrar had no power to review his order, the said application was

withdrawn and the present O.A. has been filed. It is submitted that the delay in filing the present O.A. was therefore not intentional.

5. Learned counsel for the plaintiff has argued that any order of Registrar under Chapter II Rule 3 of the Delhi High Court (Original Side) Rules, 1967 is to be filed within 15 days from making of such order and that the rule nowhere speaks that the period for challenging the order starts from the date of the knowledge. There is no doubt that the expression used in Chapter II Rule 4 of the Delhi High Court Rules is that the appeal is to be filed within 15 days of the making of the order. However, where the order passed on the back of the party and he has no knowledge of such order, can it be said that such a party has no remedy in law when he became aware of such an order after 15 days of passing of that order. That certainly is not the intention of this Rule. This rule presupposes that the order passed is in the knowledge of the party who has to appeal against it. However where such an order is not passed within the knowledge of such person and that person subsequently become aware of such an order, he cannot be said to be remediless. The identical point came up for consideration before the Supreme Court in the case of *D.Saibaba vs. Bar Council of India and Another* (2003) 6 SCC 186. In that case a handicapped person was allotted

a telephone booth in the handicap persons quota. After some time he applied for enrolment as an advocate and commenced apprenticeship under a senior lawyer. His marriage had broken down and his wife made a complaint of professional misconduct alleging that despite the fact that he was duly enrolled as an advocate he was running a telephone booth allotted to him in handicap persons quota. The State Bar Council of India after hearing appellant D.Saibaba vide its order dated 06.11.1999 directed the complaint to be dropped. Yet another complaint was lodged by his wife on 30.12.1999 on identical averments. By order dated 20.02.2001 the Bar Council of India directed the appellant D.Saibaba to surrender the STD booth. Subsequently on 26.04.2001 he surrendered the telephone booth. He, however, sought the review of order of the Bar Council of India and his application was dismissed vide order dated 26.08.2001 on the ground that the same was time barred. Considering Section 48-AA of the Advocates Act, 1961 under which the aggrieved person can avail the right to review any order provides 60 days for moving an application from the date of the order, the court gave the following findings:

“9. So far as the commencement of period of limitation for filing the review petition is concerned we are clearly of the opinion that the expression 'the date of that order' as occurring in Section 48-AA has to be construed as meaning

the date of communication or knowledge of the order to the review petitioner. Where the law provides a remedy to a person, the provision has to be so construed in case of ambiguity as to make the availing of the remedy practical and the exercise of power conferred on the authority meaningful and effective. A construction which would render the provision nugatory ought to be avoided. True, the process of interpretation cannot be utilized for implanting a heart into a dead provision; however, the power to construe a provision of law can always be so exercised as to give throb to a sinking heart.”

6. Applying the same principle as enunciated by the Supreme Court above, it is apparent that a practical interpretation is to be given to a statute in order to give a meaningful construction to it. In the light of the fact that the impugned order was not passed in the awareness of the appellant, the appellant is entitled to condonation of delay as any other interpretation would leave the appellant remediless in the circumstances of this case.

7. In view of the above discussion, I condone the delay in filing the present O.A. The application i.e. I.A.18297/2013 stands dispose of in these terms.

8. In the present O.A.143/2013 defendant no.1 has challenged the said order dated 27.09.2013 of Joint Registrar on the ground that he had no power and jurisdiction to allow the plaintiff to file a second plaint while the matter was already pending before the court on his application under

Section 340 Cr.P.C. Learned counsel for the plaintiff has argued that in view of Chapter II Rule 3 (1) of the Delhi High Court Rules read with Rule Rule 4, the Registrar has the power to admit the plaint and application.

9. Various powers of Registrar are enumerated in Chapter II Rule 3 of the Delhi High Court Rules. Rule 3(1) is reproduced as under:

3. (1) Admission of plaints and applications and issue of summons and notices;

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10. This rule certainly gives power and jurisdiction to the Registrar to admit any plaint and thus it cannot be said that the order of the Joint Registrar was without jurisdiction. Learned counsel for the plaintiff has also submitted that O.A. does not survive in view of the fact that the plaintiff had subsequently appeared in the court on 31.10.2013 and submitted that plaint had been filed on her instructions and subsequently the Registrar vide its order dated 11.11.2013 acknowledged this fact and dismissed the application I.A.15534/2013 of defendant no.2 being infructuous. It is submitted that despite the fact that the original plaint which is for consideration before the court, the appellant/defendant no.1 is pursuing this O.A. with the sole intention to delay rightful claim of plaintiff despite the fact that the order dated 27.09.2013 had lost its meaning. The

argument of learned counsel for the plaintiff has some force. The ordersheet of this court dated 31.10.2013 clearly show that the plaintiff did appear in the court in person and confirmed that the original first plaint was filed by her and therefore, the order of the Joint Registrar dated 27.09.2013 permitting the plaintiff to file the other plaint lost its meaning and had thus become *non est*.

11. This fact was also acknowledged by the Joint Registrar in his order dated 11.11.2013, which was passed in the presence of applicant defendant no.1. The order dated 11.11.2013 of the Joint Registrar is reproduced as under:

“IA No. 15534/2013 (Under Section 151 CPC filed by D2 for exemption from filing the written statement for the time being/extension of time till the enquiry about genuineness of the plaint/suit) in CS(OS) 1334/2013

*Learned counsel for the plaintiff submits that he is not to file any separate reply and has invited the attention of this Court to the order dated 11.09.2013 as well as 31.10.2013 while submitting that in terms of order dated 11.09.2013 defendant No.2 was directed to file written statement within the time prescribed and **that in view of the order dated 31.10.2013 the application has become infructuous as the plaintiff has not only come in person on the said date, but has also clearly stated that the plaint has been filed on her instructions, leaving no scope for the application to be decided now.** He submits that in terms of the liberty earlier given, the plaintiff has also filed fresh plaint and applications duly signed by her, and attested in accordance with law.*

Learned counsel for the defendant objects while submitting that filing of fresh plaint, if at all any, is not in accordance with law and that since on similar grounds the exemption from filing written statement have been granted to defendant No.1, in terms of order dated 23.08.2013, the defendant No.2 may be treated at par and as such the exemption may also be granted to the defendant No.2.

Parties have been heard at length.

Although there does not seem to be any justification for filing any written statement on the grounds mentioned in the IA and in light of the specific directions dated 11.09.2013, as an abundant caution the IA is placed forthwith before the Hon'ble Court for directions, for the date fixed.

IA No. 17344/2013 (UNDER SECTION 151 CPC for recall of order dated 27.09.2013) in CS(OS) 1334/2013

Learned counsel for the applicant defendant No.1 submits that as per his instructions he is not to press the IA and the same may be treated as withdrawn and the applicant reserves their rights to file an appeal against the order dated 27.09.2013 of this court.

Learned counsel for the plaintiff vehemently objects on the ground that the withdrawal as such would not be permissible or nor would be in the fitness of things considering the allegations levelled against the plaintiff as well as this court and as such he has objections against the withdrawal.

Learned counsel for the applicant, on the other hand, submits that there are no allegations, whatsoever, as alleged by the plaintiff side and being the applicant, the withdrawal simplicitor cannot be objected to.

In view of the above, the application is disposed of as withdrawn. Needless to say the withdrawal of the application would be without prejudice to the rights and contentions of the either sides qua withdrawal or the right to appeal against the order dated 27.09.2013.

List the IA No. 15534/2013 before the Hon'ble Court on the date already fixed."

12. Still the appellant/defendant no.1 after withdrawing his application I.A.17344/2013 and being aware of order of the court dated 31.10.2013 and its acknowledgment by the Joint Registrar in its order dated 11.11.2013, moved the present O.A. immediately on the same day i.e. 11.11.2013.

13. In view of this, the present O.A. is dismissed with cost of ₹25,000/- to be deposited with Delhi High Court Bar Association Lawyers' Social Security and Welfare Fund, New Delhi.

14. The matter already stands transferred to the District Court. Let the matter be listed before the concerned District Court on 01.02.2017.

**DEEPA SHARMA
(JUDGE)**

JANUARY 16, 2017
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