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

+ **CS(COMM) 1092/2016**

RAJINDRA K GUPTA Plaintiff

Represented by: None

versus

HEAVY ENGINEERING CORPORATION LTD & ORS

..... Defendant

Represented by: Ms. Sharmistha Ghosh, Adv.
for D-1.

Mr. Anip Sachthey, Ms. Anjali
Chauhan, Ms. Ria Sachthey,
Adv. for D-2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

04.09.2017

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CS(COMM) 1092/2016 & IA Nos. 5099/2010, 9456/2016 and 13861/2016

Despite pass-over none is present on behalf of the plaintiff. Even on 21st March, 2017 none was present on behalf of the plaintiff despite pass-over.

Plaintiff had filed the present suit under Order XXXIII Rule 1A CPC seeking permission to institute the suit as forma pauperis which application being IA No. 5100/2010 was dismissed by this Court on 12th May, 2016 and the plaintiff was directed to file the Court fees within 8 weeks, otherwise the suit was liable to be rejected under Order VII Rule 11 CPC. Plaintiff thereafter filed an application being IA No. 7893/2016 under Section 148

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read with Section 149 CPC for enlargement of time to deposit the Court fees and a further period of four weeks was granted to the plaintiff from 11th July, 2016. However, the Court fees has not been paid till date. Instead, plaintiff filed an application under Order XXIII Rule 1(3) CPC being IA No. 9456/2016 inter-alia praying for withdrawal of the present suit with liberty to file fresh on the same cause of action as an award had already been delivered by the learned sole arbitrator appointed to adjudicate the claims and counter-claims of the parties. During the pendency of IA No.9456/2016 plaintiff filed IA No. 13861/2015 under Section 151 CPC seeking withdrawal of IA No. 9456/2016 under Order XXIII Rule 1(3) CPC stating that as and when a fresh award is passed fresh cause of action would arise.

Considering that on two consecutive dates despite pass-over none is present on behalf of the plaintiff, it is apparent that the plaintiff does not wish to prosecute the suit and the applications. Consequently, the suit and applications are dismissed for non-prosecution.

MUKTA GUPTA, J.

SEPTEMBER 04, 2017
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