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

\+ **FAO(OS) No. 256/2016**

Date of decision: 9th October, 2017

MURARI SHARMA ..... Appellant
Through Mr. Chander Shekhar Patney, Advocate.

versus

SHWETA TIWARI ..... Respondent
Through Mr. Sudhanshu Sikka, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (ORAL):

This intra Court appeal under Section 10 of the Delhi High Court Act, 1966 read with Order XLIII Rule 1 and Section 104 of the Code of Civil Procedure, 1908 (Code, for short) impugns the order dated 19th July, 2016 passed by the single Judge dismissing the Chamber Appeal against the orders closing the right of the appellant Murari Sharma, defendant No. 13 in CS(OS) No. 109/2014, ***Shweta Tiwari versus The Editor-in-Chief, Amar Ujala and Company*** to file his written statement.

2. We have heard learned counsel for the parties and with their consent have taken up the appeal for hearing and disposal.

3. Shweta Tiwari, the first respondent before us, has filed the aforesaid suit for permanent injunction, rendition of accounts and damages of Rs.1 crore. The allegation is that the appellant herein had used the respondent's photograph in the advertisements of their products "kesh pari" hair oil without her consent, approval and knowledge. It is alleged by the respondent that she is a well-recognised and a well-known personality and the illegal use of her photograph by the appellant has caused irreparable damage to her celebrity status and also caused emotional distress and financial loss. The respondent claims that she is brand ambassadors of number of reputed hair care multinational products.

4. Notice in the aforesaid suit was issued and served upon the appellant on 20th February, 2014. The appellant had entered appearance on 15th April, 2014, the first date after service of notice, and was granted time to file written statement. It is the contention of the appellant that his advocate unfortunately fell sick and had to go to Haridwar for treatment and had remained there for five months. On the next date of hearing, i.e., 24th November, 2014, request was made before the Joint Registrar to extend time for filing of written statement. The Joint Registrar, however, declined the said request and closed the right of the appellant to file written statement vide order dated 24th November, 2014.

5. It appears that despite the said order, the appellant filed the written statement on 7th January, 2015 enclosing therewith copy of an open agreement purportedly signed by the respondent. The appellant

had also relied upon demand draft of Rs.22,500/- issued by the Oriental Bank of Commerce in favour of the respondent stated to have been issued at the request of the appellant.

6. The Joint Registrar vide order dated 7th January, 2015 directed that the written statement be taken off the record as it was filed beyond limitation and after the order dated 24th November, 2014.

7. The appellant thereupon filed an application, IA No. 3175/2015, under Section 151 of the Code read with Section 5 of the Limitation Act, 1963 seeking extension of time in filing of written statement. This application was dismissed by the Joint Registrar vide order dated 13th February, 2015 observing that the application was not maintainable in view of specific provision of Order VIII Rule 1 of the Code.

8. Thereupon, the appellant had filed Chamber Appeal OA No. 83/2015, under Rule 2 (C) of Chapter IV of the Delhi High Court (Original Side) Rules, 1967 for setting aside of orders dated 24th November, 2014, 7th January, 2015 and 13th February, 2015.

9. The impugned order dismisses the said Chamber Appeal recording that there was delay in filing the written statement and the maximum period of ninety days reckoned from 20th February, 2014 had expired on 20th May, 2014. The order also records that even if the previous counsel for the appellant had fallen sick and had remained in Haridwar for a period of five months, the period had come to an end in September, 2014, whereas the written statement was filed by the

appellant on 7th January, 2015. The appellant had not been able to explain the steps taken between October, 2014 till January, 2015.

10. Learned counsel for the appellant submits that the appellant had engaged an advocate who had been instructed to draft and file the written statement and relevant papers were also given to the said advocate. Unfortunately, the advocate fell sick and had moved to Haridwar for medical treatment. In this process, there was delay in filing of the written statement. The appellant being a layman did not understand the nuances and technicalities of law. He had relied upon the legal advice given to him. It is also the submission of the appellant that they are ready and willing to pay exemplary costs to the respondent for the delay caused. Counsel for the appellant relies upon the Open Agreement as well as the demand draft. It is submitted that the consequences the appellant may suffer in case decree of damages of Rs.1 crore is passed would be substantial. It is pointed out that the appellant has stopped manufacturing the hair oil "kesh pari" and the appellant has also agreed that he would not use the photograph of the respondent in any manner.

11. Counsel for the respondent, however, submits that the respondent has suffered irreparable loss of reputation and also financial loss caused on her photograph being used by the appellant. He, however, states that he has not obtained instructions on the Open Agreement or the demand draft and is unable to state anything in this regard.

12. Keeping in view the aforesaid factors, we would accept the present appeal and permit the written statement filed by the appellant to be taken on record, subject to payment of costs of Rs.75,000/- to the respondent. Counsel for the appellant agrees to pay the said costs. We also take on record the statement made by the counsel for the appellant that he would not be using the photograph of the respondent in relation to any of the products manufactured by them. The only primary issue which, therefore, survives for consideration is the question of damages. The appeal is allowed in the aforesaid terms. The costs would be paid within a period of four weeks from today.

SANJIV KHANNA, J.

NAVIN CHAWLA, J.

OCTOBER 09, 2017
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