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*IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO(OS) 167/2017 & CM Nos.20592-93/2017

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Date of decision : 29th August, 2017

ASHOK KUMAR OBEROI Appellant
Through : Mr. P.S. Singh, Adv.

versus

MANJEET SINGH (DECEASED)
THR HIS LRS & ORS Respondents
Through : Ms. Vinny Shangloo, Adv. for
R-2 along with
Mr. Harish Katyal.
Mr. H.D. Talwani, Adv. for Mr.
M.S. Saluja, Adv. for R-3.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. The appellant before us assails the order dated 20th December, 2016 passed by the Joint Registrar (Judicial) in *CS(OS)No.2602/2012 Ashok Kumar Oberai vs. Manjeet Singh & Ors.* whereby the evidence of the appellant/plaintiff has been closed.
2. The appellant also assails the order dated 13th February, 2017

passed by the ld. Single Judge whereby the ld. Single Judge has noted the fact that the appellant/plaintiff evidence was closed and that he has not appealed against the order dated 20th December, 2016 and that the said order has attained finality. The plaintiff's suit was directed to be placed for final disposal on 30th May, 2017.

3. Given the nature of controversy, it is not necessary for us to go into a detailed consideration of the factual matrix relating to the litigation. Suffice it would be to say that the appellant herein filed the suit bearing CS(OS)No.2602/2012 against Mr. Manjeet Singh who is represented by his legal heirs in the present appeal. The appellant also impleaded Mr. Harish Katyal, respondent no.2 herein contending that there was a previous agreement to sell dated 21st December, 2009 for specific performance of an agreement to sell dated 29th December, 2010 (in respect of property bearing No.289, Ambika Co-operative House Building Society, known as Ambika Vihar, New Delhi – 110087) with him which had been cancelled vide cancellation agreement/memorandum of understanding dated 28th December, 2010. Nainital Bank Limited was arrayed as defendant no.3 on the averment in the plaint that defendant no.1 had secured financial facility from it

against the security of the property.

4. The defendants entered appearance and were contesting the suit.

5. After completion of the pleadings, the case was listed for framing of issues before court on 15th January, 2016. On that date, because of the inability of the parties to assist the court, it was adjourned for the same purpose to 25th April, 2016, subject to both plaintiff and defendant no.2 paying costs of Rs.10,000/- each, to be deposited with the Delhi High Court Legal Services Authority within a period of four weeks for having wasted judicial time and public moneys towards listing the case.

6. On the pleadings of the parties, issues were framed on the 25th of April 2016 and the court directed the parties to file their list of witnesses within six weeks. The matter was posted for 22nd July, 2016 before the Joint Registrar for fixing the date of trial.

7. Despite the strict time schedule, no list of witnesses was filed by either of the parties. In this background, on 22nd July, 2016, the Joint Registrar granted two weeks further time to the parties to do so and granted six weeks time to the plaintiff/appellant to file his affidavits of evidence.

Even this order was not complied with.

8. On 5th October, 2016, the Joint Registrar (Judicial) noted that despite 10 weeks having passed since the 22nd July of 2016, the affidavits of evidence of the appellant/plaintiff had not been filed. However, in the interest of justice, the appellant/plaintiff was given one last opportunity to file the affidavit of evidence within four weeks. It was also recorded that despite an order dated 9th October, 2015 whereby the impleadment of the legal heirs of defendant no.1 was permitted, the amended memo of parties had not been filed and that the order dated 15th January, 2016 imposing the costs remained uncomplied with. A last opportunity to file the list of witnesses of the appellant was afforded by this order.

9. Unfortunately, the appellant/plaintiff failed to comply with any of these directions. It was exasperated by such negligent conduct of the appellant/plaintiff that the Joint Registrar has recorded the order dated 20th December, 2016 which has been impugned herein. It is to be noted that on this date, neither was the appellant present in the court nor he was represented by his counsel. In these circumstances, on 20th December, 2016, the Joint Registrar noted that the

appellant/plaintiff was no longer interested in pursuing the matter and consequently, closed the plaintiff's evidence. The matter was posted for 13th February, 2017 before the court for directions.

10. On the next date of hearing, the appellant was represented by his counsel before the court. The above dalliance and lack of interest on the part of the appellant/plaintiff was recorded by the court on 13th February, 2017. The court also noted that the appellant had neither filed the affidavit of evidence nor the appeal against the order dated 20th December, 2016, which order had consequently attained finality. Inasmuch as adequate opportunities had been afforded to the appellant/plaintiff, it was noted that the submission for grant of further time to do the needful, could not be accepted. The suit was therefore, posted for 30th May, 2017 for final disposal. We are informed that it is pending at this stage even on date.

11. It appears that after passing of the order dated 13th February, 2017, the appellant / plaintiff filed an application on 22nd March, 2017 which subsequently came to be registered as I.A.No.5782/2017 for recalling of the order of the Joint Registrar (Judicial) dated 20th December, 2016 and the order of the court dated 13th February, 2017.

After its filing, the appellant kept this application under objections in the Registry.

12. It is the submission of the appellant before us, by way of CM No.20592/2017 filed in the present matter, that the appellant had left for USA on 16th December, 2016 and returned only on 18th February, 2017, during which period the impugned orders were passed. The appellant contends that upon return to India, he tried to contact his previous counsel who did not take his call. Efforts to personally meet the counsel on 27th February, 2017 were also unsuccessful. The appellant also submits that the case file was returned to him only on 10th April, 2017, in a much disorganized manner. In this background, after reconstruction of the case file and necessary preparation, I.A.No.5782-83/2017 could be filed by him in CS(OS)No.2602/2012 after removing the objections only on 8th May, 2017. This application was placed before the court on 15th May, 2017 seeking recall of the orders dated 20th December, 2016 and 13th February, 2017.

The above factual narration regarding the appellant having gone to USA, his return to India and the negligence of his counsel were cited as the reason for delay.

13. The application i.e. I.A.No.5782-83/2017 was considered by the court on 15th May, 2017 noting that the order of the Joint Registrar closing the plaintiff's right to lead evidence had not been appealed which has attained finality; that no purpose could be served by recalling the order dated 23rd February, 2017 and 20th December, 2016 and applications were dismissed.

14. The appellant assails the order dated 20^h December, 2016; 13th February, 2017 and 15th May, 2017 by way of the present appeal on the same factual background on which I.A.No.5782/2017 was pressed before us.

15. We may note that in order to support that he was abroad, the appellant/plaintiff places reliance on extract of his passport. Even if it could be accepted that the appellant was abroad, there is not a whit of an explanation as to what prevented the appellant from ensuring effective steps to be taken in the suit which had been filed by him from 25th of April 2016 when issues were framed and repeated opportunity to file list of witnesses, its evidence and payment of costs imposed in January, 2016 were given.

16. The above narration of orders of the court as well as the manner

in which I.A.Nos.5782-83/2017 was filed and kept under objection for over three months would show that the appellant has acted with gross negligence and is guilty of laches in the matter, which is without any reasonable cogent and acceptable explanation. There is no justification as to why the appellant herein, after filing the suit for specific performance of an agreement relating to valuable property and claiming payment of such heavy consideration, did not take effective steps for prosecution of this case. The record of the case shows that the appellant was given adequate opportunities to file his list of witnesses and his evidence. The appellant till date even did not deposit the paltry amount of Rs.10,000/-, the costs imposed upon him as back as by the order dated 15th January, 2016.

We see no justification at all to accept this appeal.

17. We may note that even the present appeal has been filed only on 23rd May, 2017 which is more than 119 days beyond the statutory period of limitation. The appeal against the order of the Id. Single Judge can be filed only within 30 days of the passing of the order. There is no reasonable explanation for the same.

18. The application and appeal are therefore, devoid of any merit

and are hereby dismissed.

The suit being CS(OS)No.2602/2012 be listed for final disposal
on 7th September, 2017.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

AUGUST 29, 2017
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