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

+ FAO(OS) 8/2017, CM Nos.1073/2017 & 1075-76/2017

% Date of decision : 30th November, 2017

HANSRAJ MIGLANI & ORS

..... Appellants

Through : Mr. Vikas Dhawan, Adv. as
amicus curiae with Ms. Vanya
Khanna and Ms. Sukriti
Gandhi, Advs. along with
appellant no.1 in person.

versus

LAJWANTI KHURANA THR LR & ORS ... Respondents

Through : Mr. Manjeet Singh Ahluwalia,
Adv. along with R-2 & 3 in
person.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. The present appeal assails the order dated 28th of September 2016 passed by the Id. Single Judge dismissing O.A.No.116/2016 (*of defendant nos. 1 to 3 against orders dated 21st March, 2016 and 26th May, 2015*), I.A.No.6945/2016 (*seeking stay of further proceedings*) and I.A.No.6947/2016 (*for condonation of delay in filing the chamber appeal*) all of which were filed in CS(OS)No.862/2003.

2. By way of the appeal (O.A.No.116/2016), the appellants, who were defendants in the suit, had challenged the order dated 26th of May 2015 of the Joint Registrar (Judicial) closing the right of the appellants/defendant nos.1 to 3 to cross-examine the plaintiff's witnesses as well as the order dated 21st of March 2016 of the Joint Registrar (Judicial) dismissing I.A.no.13335/2015 which was filed by the appellants seeking leave to cross-examine PW-2 and PW-3.

3. The record of CS(OS)No.862/2003 has been received and has been perused. We have also heard Mr. Vikas Dhawan, ld. counsel for the appellants and Mr. Manjeet Singh Ahluwalia, ld. counsel for the respondent nos.2 and 3.

4. It appears that ***CS(OS)No.862/2003 Lajwanti Khurana & Ors. vs. Hansraj Miglani & Ors.*** was filed by Smt. Lajwanti Khurana (plaintiff no.1) and her three sons, namely, Shri Krishan Lal Khurana (plaintiff no.2), Shri Bheem Sain Khurana (plaintiff no.3) and Shri Gulshan Rai Khurana (plaintiff no.4) against the present appellant – Shri Hansraj Miglani (defendant no.1), his wife Smt. Urmila Miglani (defendant no.2), son Shri Rajesh Miglani (defendant no.3) and the Delhi Development Authority (defendant no.4).

5. The record would show that for the reasons recorded in the orders, though the evidence of the first witness was completed, the appellants were unable to conduct the cross-examination of PW-2 and PW-3.

6. In the hearing on 4th March, 2015, PW-2 and the defendant no.1 both were present. Unfortunately, the counsel of defendant no.1 did not appear. In these circumstances, the defendant no.1 was compelled

to seek an adjournment of the case from the Joint Registrar.

The Joint Registrar (Judicial) recorded that in the interest of justice, one last and final opportunity was being given to cross-examine the witness subject to cost of Rs.5,000/-, to be paid by defendant no.1 with the Delhi High Court Legal Services Committee on 26th May, 2015. The Joint Registrar further recorded that Shri Bheem Sain Khurana – PW-3, who tendered his examination-in-chief by way of an affidavit, was cross – examined only by the counsel for the Delhi Development Authority and the matter was adjourned to 8th October, 2015 for defendant's evidence.

7. The appellants had filed applications being I.A.No.13335/2015 seeking modification of the order dated 26th of May 2015 closing the appellant's right to cross-examine PW-2 and PW-3 and for permission to cross-examine these witnesses. The Id. Joint Registrar (Judicial) by order dated 21st March, 2016 observed that the costs, which were imposed by the order dated 4th March, 2015, were deposited by the appellants only after their right to cross-examine the witnesses was closed on 26th May, 2015; that the applicant did not disclose what attempts he had made to engage counsels for cross-examination of the witnesses; that sufficient opportunity had been given to the appellants to cross-examine the witnesses but they had failed to do so and that no litigant can be permitted to delay the matter by adopting dilatory tactics and that the matter had already been delayed for a long time. For these reasons, the application was dismissed by the Joint Registrar by the order dated 21st March, 2016.

8. Aggrieved thereby, the appellant filed chamber appeal being

O.A.No.116/2016 assailing the order of the Joint Registrar accompanied by an application being I.A.No.6947/2016 praying for condonation of 36 days delay in filing the application.

Notice was issued by the Id. Single Judge in this application and the chamber appeal by the order dated 30th May, 2016.

9. It deserves to be noted that despite the filing of the said applications, the appellants/defendants proceeded to file examination-in-chief of their witnesses. The statement of the appellant no.1 was recorded as DW-1 on the 25th of July 2016 when his cross-examination was deferred on the request of counsel for the respondents/plaintiffs. The matter was adjourned for his cross-examination to 24th of November 2016.

10. So far as the appeal and the application for condonation of delay of the appellants are concerned, the same came to be considered by the Id. Single Judge by the order dated 28th of September 2016. The appellants had set-up the ground of financial penury in the appeal and had stated that counsel who was engaged by him had not appeared in the court for this reason. In the order dated 28th September, 2016, the Id. Single Judge was of the view that the appellants had not even issued notice to the advocates, upon whom blame was being put; that as such the ground was being propounded without giving opportunity to the counsel to defend himself and therefore, no credence could be given thereto. The application for condonation of delay and the appeal against the order dated 26th May, 2015 was rejected.

11. Mr. Manjeet Singh Ahluwalia, Id. counsel for the respondents disputes the claim of financial penury by the appellants. He submits

that there is no justification for grant of an opportunity of cross-examination to the defendants who have substantially delayed the proceedings in the suit.

12. Given the challenge by the respondents to what the appellants claim were their own signatures on several documents filed by the appellants on record, I.A.No.18500/2014 was filed by the appellant no.1/defendant no.1 to take photographs of the original documents on record to enable the appellants to take opinion of the handwriting expert. This application was also dismissed on 28th September, 2016 for the reason that counsel for the appellants, who had appeared on that date, was not ready with the arguments.

13. It is noteworthy that the appellants have also filed a counter claim to the suit which is pending. Given the said reason of financial penury and the fact that the appellants appear to have been making diligent efforts to prosecute his defence, we are of the view that the appellants deserved to be given a chance to cross-examine the witnesses i.e. PW-2 and PW-3, who have not been cross-examined. No prejudice would have resulted to the respondents if the prayer made in I.A.No.18500/2014 was granted.

14. Mr. Manjeet Singh Ahluwalia, ld. counsel for the respondents, on instructions, submits that if the cross-examination of the plaintiffs witnesses is permitted in a time bound manner and the suit is not delayed, he would not oppose grant of such opportunity.

15. We are assured by Mr. Vikas Dhawan, ld. *amicus curiae* for the appellants, on assurance by the appellant no.1, who is present in court, that no unwarranted adjournments would be taken and the effort shall

be made to ensure that the cross-examination of the plaintiff's witnesses is concluded before 28th February, 2018, when the suit is listed before the Id. Single Judge.

16. We are also of the view that the prayer made in I.A.No.18500/2014 deserves to be favourably considered. The same would not delay the cross-examination of the witnesses .

17. In view of the above, it is directed as follows :

(i) The order dated 28th September, 2016 passed by the Id. Single Judge and the order dated 26th May, 2015 of the Joint Registrar (Judicial) closing the right of the appellants/defendant nos.1 to 3 to cross-examine the plaintiff's witnesses are hereby set aside and quashed. As a result, I.A.No.13335/2015 filed by the appellants/defendants in CS(OS)No.862/2003 is hereby allowed.

(ii) The parties shall appear before the Joint Registrar (Judicial) on the 18th of December 2017 for fixation of date on which the plaintiff's witnesses would be cross-examined. The plaintiffs shall keep the witnesses available for cross-examination on all dates which are fixed by the Joint Registrar (Judicial).

(iii) The Joint Registrar (Judicial) shall make every endeavour to ensure that the cross-examination of PW-2 and PW-3 in CS(OS)No.862/2003 is positively concluded before 28th of February 2018 when the suit is listed.

(iv) The order dated 28th September, 2016 rejecting I.A.No.18500/2014 is also hereby set aside and quashed. The appellants shall be permitted to take photographs of the documents as has been prayed in I.A.No.18500/2014 for seeking opinion of the

handwriting expert before the Assistant Registrar (Original) in accordance with the settled procedure.

(v) The appellants shall be entitled to produce and prove the report of the handwriting expert in accordance with law and also to examine the handwriting expert, as may be necessary for this purpose.

This appeal is allowed in the above terms.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

NOVEMBER 30, 2017

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