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

+ FAO(OS) 36/2018 & CM Nos. 8706-8707/2018

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Date of decision : 7th March, 2018

KAILASH AGGARWAL & ANR

..... Appellants

Through : Mr. Sachin Chopra and
Mr. Shubhnit Hans, Advs.

versus

CHANDAN & ANR

..... Respondents

Through : None

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

CM No.8707/2018 (*exemption*)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

FAO(OS) 36/2018 & CM No. 8706/2018

1. This appeal emanates out of a suit for specific performance being CS(OS) No. 1279/2010 Kailash Aggarwal & Anr. v. Chandan Ramamurthi & Anr.
2. The appellant before us who is the plaintiff in the suit, has assailed an order dated 11th January, 2018 to the extent that it records the following :

“4. Future defaults of the plaintiffs in appearance inspite of the matter being listed in the cause list shall be treated as non-readiness and non-willingness of the plaintiffs to perform the part of the Agreement for specific performance of which this suit is filed.”

3. It is submitted by Mr. Sachin Chopra, learned counsel for the appellant/plaintiff that despite the best efforts of the plaintiff, it is the respondents/defendants who are not permitting the final adjudication in the suit.

4. Our attention is drawn to an order dated 8th December, 2017 when the matter was listed pursuant to an order of the Court Commissioner without notice to the parties and as a result of which none of the parties were present or represented.

5. On the next date. i.e. 8th January, 2018, the matter was called out for the first time beyond court hours and consequently stood adjourned to 11th January, 2018.

6. It is the submission of Mr. Chopra, learned counsel for the appellant that there has never been any default on the part of the appellant and that in fact, it is the respondents/defendants who have delayed adjudication and have remained absent from the proceedings on almost 20 occasions whereas the appellant has not appeared on hardly 7 occasions.

7. Learned counsel would contend that there was no default at all attributable to the plaintiff for the proceedings in the past.

8. It is further submitted that on the 11th of January, 2018, despite the observations of the learned Single Judge against the plaintiff, no order has been made for any consequences to enure to the defendant(s) for default(s) on their part.

9. So far as the submission regarding the consequences of a default on the part of the plaintiff/appellant under the agreement to sell is concerned, we do not find any illegality in the order which has been recorded. The '*reference to future defaults*' is clearly to any default which may occur in the future.

10. It has also been submitted that the impugned order directs the personal appearance of the appellants/plaintiffs inasmuch as it records '*defaults of the plaintiffs in appearance*'.

So far as the reference to the appearance of the plaintiff in para 4 of the order dated 11th January, 2018 is concerned, the same has to be read as referring to a stage in the suit when the appearance of the plaintiffs is actually required for further proceedings, Say, for the purposes of recording of their evidence. Otherwise, the appearance of counsels/authorised representatives has to suffice. This has to be the purport of the order. No interference on this ground is warranted.

11. However, there is substance in the appellant's grievance that the learned Single Judge has not provided for the consequences of default in all court proceedings on the part of the defendants. The learned Single Judge may therefore also consider appropriate consequences upon a default attributable to the defendant(s) and pass necessary orders thereon as well.

This present appeal and application are disposed of in the above terms.

ACTING CHIEF JUSTICE

MARCH 07, 2018/kr

C.HARI SHANKAR, J

