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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 22nd March, 2018

+ CM(M) 598/2015 & CM No.17560/2017

M/S SANGHI MEDICAL CENTRE P. LTD Petitioner
Through: Mr. Om Prakash, Advocate.

versus

DR. MANIK RANJAN DUTTA & ORS Respondents
Through: Mr. Anil Kher, Senior Advocate
along with Mr. D.R. Bhatia,
Mr. Sandeep thukral & Ms.
Subiya Akbar Warsi, Advocates
for LR No.2 of R-1.
Mr. M.A. Niyazi with Mr. Kirti
Jaswal, Advocates for LR No.3
of R-1.
Ms. Arti Bansal with Mr.
Ashutosh Nandan Atrey,
Advocates for R-3.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The suit for declaration and injunction – permanent and mandatory – of the petitioner was instituted on the original side of this Court in 1996, the prime issue raised being as to whether the petitioner as the plaintiff had the right to use and raise construction on the terrace floor over and above the second floor of property bearing no. M-30, Greater Kailash-1, New Delhi on the ground floor of which it claims to have acquired the right, title and interest vide sale deed

statedly executed on 01.08.1996 by the second respondent who is described to be the original owner of the subject property, she having earlier entered into an agreement to sell with respect to the said portion with terrace rights in its favour. The cause of action pleaded in the suit was primarily that the first respondent having purchased rights in respect of the first and second floor portion of the said property had started raising construction on the terrace floor, such work being illegal and unauthorized, also affecting the rights of the plaintiff qua the said terrace portion.

2. The suit was transferred, on account of change of pecuniary jurisdiction, to the district courts where it came to be allocated to the court of an Additional District Judge (Central), it having been registered at that time as CS No.011/2009. An application under Order XIV Rules 4 and 5 read with Section 151 of Code of Civil Procedure, 1908 was then pending. The counsel for the plaintiff was not present and there was a request for adjournment through his proxy which was opposed. The Additional District Judge granted the request imposing cost of Rs.1,000/- and listed the case for arguments on the said application to be heard on 28.03.2014.

3. On 28.03.2014, the court in question was presided over by another Additional District Judge-03 (Central). In the meanwhile, pursuant to administrative instructions issued by this Court on 08.01.2014 and 13.01.2014, the District and Sessions Judge concerned had issued certain orders in terms of which the suit in question stood transferred to the court of Additional District Judge-14, Central District at Delhi. She by her proceedings recorded in the forenoon of

28.03.2014 directed the parties to appear before the court to which the case had been transferred at 2.00 P.M. on the same date, instructing the ahlmad to send over the record complete in all respects by 12.30 P.M.

4. It is against the above backdrop that the case was taken up by the Additional District Judge -14, Central, Delhi (the transferee court) in the afternoon session of 28.03.2014. He passed the following order:

“Present: No authorized representation on behalf of plaintiff to argue the matter. Only one proxy counsel has appeared.

Since, the counsel for plaintiff is repeatedly seeking time on one ground or other despite the fact that the case was adjourned for arguments on the last date of hearing and a cost of Rs.1,000/- was imposed upon him for seeking adjournment. Neither the cost has been tendered nor paid. Accordingly, the plaintiff is debarred from pursuing the remedy further and suit of plaintiff is dismissed for non-payment of cost in terms of Order 35-B CPC.

File be consigned to Record Room.”

5. The afore-mentioned order was questioned by the plaintiff/petitioner by an application under Order IX Rule 9 CPC which, however, was found to be ill-conceived and dismissed on 06.02.2015 by the same court as had dismissed the suit on 28.03.2014 by the afore-quoted order.

6. It may be added here that one of the submissions of the petitioner has been that it had got prepared a bank manager's cheque on 29.05.2015 in favour of the first respondent (first defendant in the suit), it having been filed in original as annexure P-14 to the petition at

hand.

7. During the pendency of the petition, challenging primarily the order dated 28.03.2014, the first respondent died and his legal heirs have since come on record by substitution, they being now represented by different set of counsel.

8. Again, during pendency, the second respondent has also died, the death having occurred on 05.01.2015. By application (CM No.17560/2017), a prayer is made for the substitution of the legal representatives of the second respondent to be dispensed with and her name to be deleted from the array, the prime contention being that no relief is claimed against her or her legal heirs, she having already transferred her rights in the subject portion in favour of the plaintiff, i.e. the petitioner, by the sale deed referred to above.

9. The petitioner being the plaintiff of the case and master of the proceedings arising therefrom, no relief being claimed against second respondent, in the afore-mentioned facts and circumstances, the prayer for dispensing with the formality of substitution of the said party upon her death is granted and instead her name stands deleted.

10. This court finds substance in the grievance of the petitioner that its suit should not have been dismissed in the manner it was done by the order dated 28.03.2014. Though the case was listed for arguments on the pending application under Order XIV CPC, there was some confusion prevailing. The case had been transferred, under administrative instructions of this Court, followed by formal orders passed by District Judge in control of the district. The case file, thus, had to travel from one court to the other and in that fact-situation the

counsel for the plaintiff was not readily available for arguments. The least that could have been done by the transferee court was to give one opportunity by adjourning the matter to a later date, may be even the next day. It is unbelievable that the plaintiff had not been ready or willing to tender the cost of Rs.1,000/- only that had been imposed on the previous date.

11. For the foregoing reasons, the petition is allowed. The impugned order is set aside. The suit is restored on the file of the trial court. It shall be proceeded with in accordance with law.

12. The parties are directed to appear before the trial court on 23rd April, 2018.

13. The petition and the pending application stand disposed of in above terms.

MARCH 22, 2018

srb

R.K.GAUBA, J

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