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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 22nd January, 2018

+ CM(M) 801/2016 & CM No. 30166/2016 (stay),
CM No. 30169/2016(delay)

GARIMA GOEL Petitioner

Through: Mr. Anand K. Mishra with
Mr. Mani Karan Sharma,
Advocates.

versus

PANKAJ JAIN Respondent

Through: Ms. Arti Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The proceedings from which the present petition arises, relate to a civil suit (registered at that point of time as Suit No.97/2014), instituted by the petitioner against the respondent seeking reliefs in the nature of perpetual injunction and cancellation of sale deed dated 01.05.2006. The respondent herein had filed the written statement in Febraury, 2007 in answer to the said suit. In the written statement he had also come with a counter claim in exercise of the liberty granted by the provision contained in Order VIII Rule 6A of the Code of Civil Procedure, 1908 (CPC). For some inexplicable reasons, the counsel then engaged by the petitioner chose not to file a reply to the counter-claim while submitting a replication in answer to the written statement submitted in reply to the plaint and instead presented an application

taking exception to the maintainability of the counter-claim, which was noted in the proceedings dated 20.03.2007 by the Civil Judge.

2. The objection to the maintainability of the counter-claim stood rejected by order dated 25.07.2007. Thereafter, neither the petitioner nor his counsel, nor the presiding Judge, remembered the need for a written statement to be submitted in answer to the counter-claim. The case kept hanging fire on several dates on some procedural issue or the other.

3. Eventually, in November, 2008, the respondent (the counter-claimant) submitted an application under Order VI Rule 17 CPC seeking liberty to amend the pleadings in the context of the counter-claim. The said application remained pending for almost three years. It was allowed on 14.09.2011.

4. After allowing the amendment of the counter-claim, the Civil Judge by a short order also recorded on 14.09.2011, directed the case to be listed for admission/denial of documents and for framing of issues.

5. The case thereafter continued to linger. On 26.07.2012, assumably on the instructions of the petitioner (then plaintiff of the suit), his counsel made a statement which led to his suit for injunction being dismissed as withdrawn. The Civil Judge noted that the counter-claim of the respondent herein (then the defendant) had survived. He also noted that the counter-claim had been amended by order dated 03.10.2008. He listed the matter for 18.10.2012 for admission/denial of documents on the counter-claim and also for framing of issues.

6. The issues on the counter-claim were settled on 05.09.2013. Curiously, the said order records the observation “*pleadings are complete*”. It appears that the Civil Judge took the plaint as originally filed as the pleadings on behalf of the petitioner which, post the withdrawal of the main suit and in the proceedings that were continuing on the counter-claim – which would actually be in the nature of a cross suit – was erroneous, in as much as the plaint could not be treated as pleadings in answer to the counter-claim.

7. The subsequent proceedings resulted in some evidence being led by the counter-claimant on which the right of the petitioner (defendant in the counter-claim) came to be closed. The said orders were subject matter of challenge before this Court in CM(M) No.956/2015 but unsuccessfully. It is conceded that the Special Leave Petition was preferred before the Supreme Court but with no success qua the right of the petitioner (defendant in the counter-claim) for cross-examination of the witness of the counter-claimant.

8. It is stated that upon change of the counsel, the neglect in filing the written statement in answer to the counter-claim came to the fore. The petitioner thereafter took steps primarily by filing an application under Order VIII Rule 1 CPC which was declined by order dated 24.09.2015 which is impugned before this Court. The learned Civil Judge, it is apparent from the impugned order, was not satisfied even with the explanation for delay in the said move and, thus also declined to condone the same, as was requested.

9. In view of the reasons set out in the application to such effect (CM No. 30169/2016), delay is condoned and the application disposed of.

10. Having regard to the chronology of events and the proceedings noted above, there is no escape from the impression that there has been utter neglect not only on the part of the counsel engaged by him but also by the petitioner. At the same time, it cannot be ignored that after amendment of the counter-claim, it was incumbent on the part of the Civil Judge to have given a renewed opportunity to the petitioner (the defendant in the counter-claim) to file his written statement in answer to the said amended counter-claim. This is acknowledged even by the Civil Judge in the impugned order.

11. As noted earlier, immediately after allowing the amendment, the case arising out of the counter-claim was taken to the stage of admission/denial of documents and for framing of issues. As also noted earlier, the Civil Judge appears to have proceeded at that stage under the wrong assumption that the pleadings had been completed. Since written statement in answer to the counter-claim had not come on record, the pleadings could not be treated as complete. The lapse was also on the part of the trial court in that while allowing the amendment of the counter-claim, the party on the other side was not called upon to file any written statement in answer to the amended counter-claim. It is well-settled that no party should suffer on account of neglect by the Court.

12. In the above facts and circumstances, a case is made out for opportunity to be given to the petitioner to file the written statement in

answer to the counter-claim. However, bearing in mind the neglect and the consequent delay suffered by other side, such opportunity cannot be without suitable conditions.

13. Thus, the petition is allowed. The impugned order is set aside. The prayer in application under Order VIII Rule 1 CPC for filing the written statement in answer to the counter-claim (amended) is granted on costs of Rs.30,000/- (Rupees Thirty Thousand Only) which shall be paid/tendered along with the written statement to be submitted before the trial court within 30 days hereof.

14. Needless to add after the written statement has been filed, the trial Judge will give an opportunity to the opposite party to file pleadings in answer to the written statement submitted in response to the counter-claim which, in the present state of facts would be in the nature of replication. Further, after the pleadings are complete, the trial Judge will hear the parties and reconsider the issues and then proceed further in accordance with law.

15. The petition and the pending application (CM No.30166/2016) stand disposed of in above terms.

16. *Dasti* under signatures of Court Master.

R.K.GAUBA, J.

JANUARY 22, 2018

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