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

+ FAO(OS) 13/2018 & CM Nos.2804/2018 & 28273/2018

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Date of decision : 19th July, 2018

SUNIL KOHLI

..... Appellant

Through : Mr. V.K. Tandon and
Ms. Mamta Tandon, Adv.

versus

ANIL KOHLI & ORS.

..... Respondents

Through : Mr. Raman Gandhi, Adv.
Ms. Nikita Salwan, Adv. for R-
3/DSIIDC

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

FAO(OS) 13/2018

1. The appellant challenges the order dated 15th November, 2017 passed by the learned Single Judge allowing IA No. 4941/2017 (under Order VI Rule 14, 15 and 16 r/w Section 151 of the CPC) which was filed by the respondent/plaintiff herein in CS(OS) 306/2016 praying for the written statement of the defendant no.2(appellant before us) to be taken off the record.

2. The plaintiff filed IA No. 4941/2017contending that he had arrayed Sunil Kohli S/o Late Sh. P.C. Kohli as defendant no.2; however the affidavit in support of the written statement filed on 31st August, 2016 by defendant no.2 had been sworn by “Suunil Kohli” which signatures did not resemble the signatures of the defendant no.2.

3. The impugned order records that on the previous date of hearing, the appellant/defendant no.2 had himself appeared before the court and stated that he had changed his signatures.

4. On the 15th of November, 2017 as well, the defendant no.2/appellant was personally present with his counsel in court and he was duly identified before the court by the learned counsel. On this date as well, the defendant no.2 had informed the court that he had changed his name from Sunil Kohli to Suunil Kohli on 23rd August, 2016 for which he had issued a proclamation.

5. The appellant had further informed the learned Single Judge that after changing his name, he had changed his signatures as well. The appellant had fully explained that he had signed the affidavit attached with the written statement as per his new signatures.

6. Despite the defendant no.2/appellant standing by the fact that the written statement on his behalf on record had actually been signed by him, the private respondent/plaintiff in the suit still pressed his application placing reliance on an application filed by defendant no.2/appellant in Civil Suit No. 20090/2016 pending in the District

Courts. An affidavit sworn on 30th May, 2017 supporting this application was placed before the court wherein the signatures of the appellant/defendant no.2 were totally different. Reliance was also placed by the plaintiff on a reply filed by the appellant to an application filed by defendant nos. 3 and 4 in CS(OS) 2848/2013. An accompanying affidavit sworn on 17th August, 2017 which accompanied the reply was placed before the court to show that the signatures thereon did not tally with the signatures of the defendant on the written statement. On these assertions, the learned Single Judge rejected the assertions of the defendant no.2 that despite having changed his name and signatures, he still continue to sign as per the old signatures in other pleadings and therefore rejected the explanation of the plaintiff/appellant.

7. In our view, the learned Single Judge has erred in failing to note that the defendant no.2 has himself appeared before the court and accepted that the written statement on record had been signed and verified by him and accompanied by his affidavit. The defendant no.2 was standing by his defence. This was not a case where the defendant no.2 had appeared in court and said that somebody else had affixed his signatures. Merely because there was variation in the signatures affixed by the defendant no.2 at different places was no reason to direct that the written statement be taken on record. So long as the defendant no.2 was confirming and standing by the same, it was reason enough to reject the application of the plaintiff.

8. This was also not a case of forgery where the defendant no.2 had forged the signatures of some other party on any court pleadings.

For all these reasons, we find substance in the challenge laid by the appellant.

9. The order dated 15th November, 2017 on IA No. 4941/2017 is hereby set aside and quashed.

10. It is directed that as a result, the written statement filed by defendant no.2 shall be kept on record.

It shall be open for the applicant to seek relief in an appropriate remedy.

CM No. 2804/2018 (*stay*)

11. In view of the orders passed in the appeal, the application does not survive for consideration and is dismissed.

CM No.28273/2018

12. The application seeking the relief prayed is not maintainable in the present proceedings. The same is dismissed.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

JULY 19, 2018/kr