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

+ **FAO(OS) 80/2019**

RITA MEHRA Appellant

Through: Mr.Bharat Gupta, Advocate with
Appellant in person.

versus

SUNITA REKHI & ORS Respondents

Through: Mr.T.K. Ganju, Senior Advocate with
Mr.Yash Pratap Singh, Advocate for
R-1.
Mr.Rajesh Rawal, Advocate for R-2,
4 and 5.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

% **ORDER**
22.11.2019

1. This is an appeal by Defendant No.6 in CS (OS) 1789 of 2006 (filed by Respondent No.1/Plaintiff) against the impugned order dated 7th March, 2019 passed by the learned Single Judge rejecting the prayers made by her in IA No. 10256/2017 filed in Order XXXIX Rules 1 and 2 of the Code of Civil Procedure ('CPC') praying for the grant of certain interim reliefs.

2. In the impugned order, the learned Single has declined to grant the interim reliefs for the reason that the Appellant/Defendant No.6 "has not made any pleadings in the suit; has neither signed the Complaint nor the written statement,

even though it is a suit for partition”. Accordingly, it has been held that Appellant/Defendant No.6 could not have maintained the application seeking interim relief.

3. The above suit is for partition of the estate of the father of the Plaintiff and Defendant No.6. Their other siblings are co-Defendants in the suit. Defendant No.6 originally was a Co-Plaintiff. Pursuant to certain proceedings in mediation where according to her she was assured of her share in the suit properties, she withdrew as Co- Plaintiff from the suit. Subsequently, when the other Defendants in the suit, including the Plaintiff declined to recognise her share in the suit properties, Defendant No.6 filed IA No. 2631/2012 under Order I Rule 10 CPC in the suit, seeking impleadment as a Co-Defendant. By an order dated 26th August, 2016, the said application was allowed and the Appellant was impleaded as Defendant No.6 in the suit.

4. A perusal of the IA No.2631/2012 filed by the present Appellant/Defendant No.6 under Order I Rule 10 CPC reveals that she had in para 8 of the said application made the following categorical statement:

“That in view of the above circumstances, it is submitted that in event, the Applicant is impleaded as party, there would be no change in the nature of the suit, nor there would be any delay etc. in disposal of the suit, in as much as the Applicant would adopt the written statement dated 16.01.2007, filed by Defendant No. 1 and 2, as it is”

5. It must be noticed at this stage that this application was filed on 8th February 2012, by which time the Appellant’s father who was Defendant

No.1 in the suit, expired. Another peculiar development is that although the written statement had been jointly filed on 16th January 2007 by the father and mother of the Appellant (Defendant Nos.1 and 2, respectively), after the death of the father, Defendant No.2, i.e. the mother, filed an application seeking amendment of the said written statement, jointly filed by her with her husband. This application under Order VI Rule 17 CPC was allowed by an order dated 2nd December, 2015. This has to be read with the subsequent order dated 20th September, 2016. The fact of the matter is that the stand of the mother, i.e. Defendant No.2 is now different from the stand taken in the joint written statement filed by her with her husband on 16th January, 2007.

6. In the order dated 22nd August, 2016 allowing the present Appellant's IA No.2631/2012, the learned Single Judge noted that even if earlier the present Appellant had expressed desire not to continue as Plaintiff in the suit, she ought to have been transposed as Defendant in the suit. Later on, in the same order in para 51, it is noted "the counsel for Ms. Rita Mehra states that Ms.Rita Mehra does not went to file any written statement and only claims her shares determined in the suit".

7. Learned counsel for the Appellant/Defendant No.6 states that the above statement had to be read along with para 8 of the IA No.2631/2012, where the categorical statement was that Defendant No.6 wished to adopt the written statement jointly filed by Defendant Nos.1 and 2. However, in the impugned order the learned Single Judge has construed the statement made by Counsel for Defendant No.6 as precluding her from contending that she was in fact adopting the written statement of Defendant Nos. 1 and 2. It has

been held that since the Appellant has not filed any pleadings, any statement made by her in the aforementioned application would stand superseded by the statement made on her behalf in the Court.

8. Having heard Mr. Bharat Gupta, learned counsel for the Appellant, Mr. Rawal, learned counsel for the Respondent Nos. 2,4 and 5 and Mr. Ganju learned Senior counsel appearing for the original Plaintiff/Respondent No.1, the Court is of the view that, the present Appellant/Defendant No. 6 should be allowed to reiterate the categorical statement made by her in para 8 of IA No. 2631/2012 that she adopts the written statement jointly filed by Defendant Nos. 1 and 2 originally on 16th January, 2007.

9. It appears that Defendant No.6 wants to adopt the same stand taken by her deceased father in the said written statement. The Court is of the view that she should be permitted to do so, notwithstanding that the mother may now have changed her stand and filed an amended written statement.

10. In view of the above conclusion, the consequential order is that it will be open now to the Appellant to file any other application seeking appropriate remedies. The appeal is disposed of in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 22, 2019/pa