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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA 306/2018

SHAILJA GUPTA

..... Appellant

Through: Mr. Anubhav Mehrotra, Advocate
(Mobile No. 9811852189).

versus

SATISH CHANDRA GUPTA

..... Respondent

Through: Mr. Vidit Gupta, Advocate (Mobile
No. 9910995511).

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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20.02.2019

RFA 306/2018 and C.M. Appl. No. 12805/2018 (for stay)

1. On 25.7.2018, at the time of issuing of notice to the respondent, the following order was passed:-

“C.M. Nos.12803/2018 & 12806/2018(exemption)

1. Exemption allowed subject to just exceptions.
C.M.s stand disposed of.

C.M. Nos.12807/2018(for condonation of delay in filing) & 12804/2018(for condonation of delay in re-filing)

2. For the reasons stated in the applications, delay of 19 days in filing and 141 days in re-filing the appeal is condoned.
C.M.s stand disposed of.

+RFA No.306/2018 & C.M. No.12805/2018(stay)

3. Counsel appears for the respondent/plaintiff. Counsel for the appellant will give a copy of complete paper book of the appeal to the counsel for the respondent within one week.
4. Counsel for the respondent/plaintiff states that in execution

of the decree, possession of the suit premises has been taken by the respondent/plaintiff on 3.4.2018 and the goods of the appellant have been received on superdari. If that is so, and possession of the suit premises is taken in execution of a decree, this Court cannot today order *status quo ante* without hearing the counsel for the respondent. Counsel for the respondent/plaintiff states that he has no objection to the appellant taking her goods from the suit premises but the appellant refuses to take the same.

5. I may also note that by the impugned judgment two suits were decided, one suit filed by the respondent for possession and the other suit filed by the appellant for declaration and injunction with respect to the ownership rights in the suit property but only one appeal is filed against the impugned judgment, and therefore, technically the judgment in the suit filed by the respondent having not been challenged can operate as *res judicata* against the present appellant.

6. Re-notify on 14th November, 2018.”

2. In this order it is categorically noted that the present appeal would be barred by *res judicata* as appeal against the cross-suit was not filed.

3. On the next date of hearing i.e. on 14.11.2018, a new counsel appeared and, only for this reason adjournment was granted, but it was made clear that no further accommodation shall be granted to the appellant. This order dated 14.11.2018 reads as under:-

“1. Only because a new counsel appears for the appellant, this appeal is adjourned, but it is made clear that no further accommodation shall be granted to the appellant.

2. It is noted that a detailed order has been passed on 25.7.2018 and which records that the present appeal may not be maintainable in the absence of filing of the appeal against the judgment in the cross suit filed by the appellant with the further fact that respondent/plaintiff has already received possession of the suit premises in execution proceedings.

3. Re-notify on 20th February, 2019.”

4. Today, once again counsel for the appellant says that inspite of writing e-mail the appellant has not contacted the counsel, and

therefore it is clear that the appellant is not interested in pursuing the appeal. Counsel for the appellant also is not in a position to argue the appeal on account of lack of instructions from the appellant.

5. This appeal is therefore dismissed for non-prosecution.

6. Let no application for restoration/recall of this order be entertained unless costs of Rs.25,000/- are first paid to the counsel for the respondent.

VALMIKI J. MEHTA, J

FEBRUARY 20, 2019

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