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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 06th SEPTEMBER, 2019

+ FAO 451/2017

MOHAN KHANDELWAL

..... Appellant

Through: Mr. Om Prakash and Mr. Pradeep
Kumar Tripathi, Advocates

versus

SURINDER KUMAR GUPTA & ORS

..... Respondents

Through: Mr. Arun Kumar Verma, Sr.
Advocate with Ms. Deepanshi Kumar, Mr.
Arjun Malik, Advocates for R-1 to 4

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The civil suit (registered as CSDJ 18883/16) of the appellant against the respondents was instituted in 1992 on the original side of this court. It had reached the stage of defendant's evidence when it came to be dismissed in default on account of non-appearance of the plaintiff on 01.08.2014. An application for restoration invoking order IX Rule 9 of the Code of Civil Procedure, 1908 (CPC) with prayer for condonation of delay under Section 5 of the Limitation Act was filed. The matter arising out of the said application, however, stood transferred to the district court on account of change of pecuniary jurisdiction. By order dated 17.08.2017, however, the said

applications were dismissed by the Additional District Judge, the said order being under challenge by the appeal at hand.

2. The learned senior counsel for the first to fourth respondents, on instructions, submitted that though the conduct of the appellant (plaintiff) has been full of neglect, he having deliberately caused the proceedings to be protracted but in order to cut short the controversy, the prayer for restoration of the proceedings in the civil suit is not contested, though the request being that suitable costs may be imposed and directions be given so that the appellant hereinafter prosecutes the case diligently without causing any further delay. In this context, the learned counsel pointed out various order-sheets in the suit wherein the plaintiff would not even appear, there being no justification offered for such recurrent absences, reference being made to the record of proceedings held on 13.07.1999, 12.03.2001, 23.02.2004, 20.07.2004, 22.03.2011, 29.07.2011, 05.05.2012, 30.11.2012, 15.12.2012, 16.02.2013, 23.03.2013, 20.04.2013, 18.05.2013, 20.07.2013, 20.03.2014, 19.04.2014.

3. The learned counsel for the appellant clarified that the fifth respondent has not been participating in the civil suit for long, she having been set *ex parte* and not even having filed her written statement, it resulting in a right accruing in favour of the plaintiff to press for her defence to be struck off.

4. Having perused the record, this court finds the exception taken to the conduct of the appellant in the proceedings in the civil suit to be correct. Indeed, the appellant and his counsel have indulged in neglect

such that they would remain absent at will resulting in the matter being adjourned unnecessarily.

5. However, in view of the no objection now given by the contesting defendants, prayer in the application for restoration and for condonation of delay in moving of such application are granted subject to costs of Rs.50,000/- to be paid on the date of hearing being hereby fixed for the appearance of the parties before the trial court, this being a pre-condition to the right to prosecute the case further. The impugned order is set aside.

6. The case, as observed, had reached the stage of defendant's evidence when it was dismissed. It appears the task of recording of evidence was earlier entrusted to a Local Commissioner. It further appears that on account of lack of control on the part of the Local Commissioner, a lot of delay was occasioned. In these circumstances, this court agrees with the request of the counsel for the defendants that the evidence will have to be recorded in the court rather than being entrusted once again to a Local Commissioner. The court is informed that aside from one of the defendants, four other official witnesses are to be examined. The affidavit of the defendant who is to be examined as witness has statedly already come on record and only needs to be tendered. The learned counsel for the defendants undertake that effective steps will be taken on each and every date fixed so that the recording of the evidence is completed at the earliest.

7. Given the old pendency of the matter, it being of the vintage of 1992, there is undoubtedly a need for expedition. The trial Judge is

directed to proceed with the case expeditiously, if possible, on day-to-day basis and render decision at the earliest preferably within six months from the date of next appearance. Of course, for this, the parties on both sides and their counsel will have to cooperate.

8. The parties are directed to appear before the trial court on 10.10.2019.

9. The trial court record shall be returned forthwith with a copy of this judgment.

10. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 06, 2019

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