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

*Reserved on: 23<sup>rd</sup> January, 2020*

*Pronounced on: 6<sup>th</sup> February, 2020*

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**FAO(OS) 17/2018 and C.M. APPL. 41460/2018**

**CHATTER SINGH RAO**

..... Appellant

Through: Mr.Kuldeep Sehrawat, Advocate with  
Appellant in person.

versus

**KAMAL KUMAR**

..... Respondents

Through: Mr.Raman Kapur, Senior Advocate  
with Mr.Dhiraj Sachdeva, Advocates.

**CORAM: JUSTICE S. MURALIDHAR  
JUSTICE TALWANT SINGH**

**J U D G M E N T**

**Talwant Singh, J.**

1. The Appellant has filed first appeal under Section 10 of Delhi High Court Act to set aside the impugned order dated 12<sup>th</sup> December, 2017 and restore the suit of the Appellant bearing CS (OS) No.519/2010 to its original number.

2. The case of the Appellant/Plaintiff is that on 16<sup>th</sup> March, 2010 he filed a suit seeking specific performance of an agreement dated 16<sup>th</sup> October, 2007 against the Defendant praying to direct the Defendant to execute sale deed in

respect of suit property bearing number B-14, Mayfair Garden, Hauz Khas, New Delhi or in the alternative he claimed damages for Rs.90,00,000/-. He further alleges that he was cheated by two Advocates, namely Mr. Ajit Singh and Mr. Arvind Kumar Tiwari and he lodged a complaint dated 27<sup>th</sup> September, 2017 against them to Bar Council of Delhi as the case filed by him was withdrawn by the said Advocates without his instructions on 2<sup>nd</sup> February, 2015. The application bearing IA No.11792/2017 for restoration of his suit was filed by him on 9<sup>th</sup> October, 2017 and the same was dismissed vide impugned order dated 12<sup>th</sup> December, 2017.

3. The case of the Appellant is that he was in contact with one Mr. Ajit Singh, Advocate and not with Mr. Arvind Kumar Tiwari who had withdrawn the case. The Appellant came to know about withdrawal of his suit on 23<sup>rd</sup> September, 2017 and he immediately filed a complaint against the said two lawyers on 27<sup>th</sup> September, 2017 and thereafter he filed the application for restoration of the suit, which was dismissed by impugned order.

4. It has been further submitted that the observation made by the learned Single Judge that Bar Council rarely takes action against the Advocates is not appreciable. It has been submitted that the affidavit accompanying the withdrawal application was itself doubtful. The suit should not have been permitted to be withdrawn without directing the Appellant's presence in Court. The bank draft was deceptively deposited in Appellant's account on 10<sup>th</sup> April, 2017 (it should have been 10<sup>th</sup> April, 2015), i.e. one day prior to its expiry as bank draft was dated 12<sup>th</sup> January, 2015 but the case itself was

withdrawn on 2<sup>nd</sup> February, 2015 and this fact throws doubt about the genuineness of compromise. On 14<sup>th</sup> January, 2015 it was noted in the order sheet that the parties were hopeful of settlement, so there was no occasion to get the draft prepared on 12<sup>th</sup> January, 2015 itself. Under these circumstances, the Appellant has prayed to set aside the impugned order dated 12<sup>th</sup> December, 2017 before the learned Single Judge and to restore the suit to its original number.

5. Notice of appeal was issued on 12<sup>th</sup> March, 2018. Respondent entered appearance. On 4<sup>th</sup> April, 2018 the following directions were issued:

“Let the details of the litigation and the counsels who have appeared for the appellant in all litigations initiated by the appellant against the respondent or any other party giving the specific details of all counsels who have represented the appellant be filed in a tabulation within one week from today.”

6. In response thereto, the present Appellant filed an affidavit dated 11<sup>th</sup> February, 2019 giving details of the cases and the Advocates who had appeared for him. Para 3 of the said affidavit is important and is reproduced here under:

“That the deponent had never met and seen any of his counsels except Shri Ajit Singh, Advocate who has got all the papers signed in blank from the deponent from the residence of deponent only.”

7. In response to this affidavit, the Respondent filed a reply dated 2<sup>nd</sup> July, 2019 duly supported by an affidavit of the same date. Arguments heard.

8. Throughout the appeal as well as even before the learned Single Judge at the time of hearing of the restoration application and up to the date of filing

of the affidavit dated 11<sup>th</sup> February, 2019, the contention of the present Appellant is that he had never met and seen any of his counsels except Shri Ajit Singh, Advocate who was getting all the papers signed in blank from the Appellant at his residence. This fact has been denied by the Respondent and as a proof thereof, he has filed on record the certified copies of the relevant records/order sheets of different Courts. It has been mentioned that even prior to the filing of the suit in 2010, the Appellant had served a legal notice dated 4<sup>th</sup> November, 2009 on the Respondent through his counsel Mr. Rahul Tyagi.

9. The Appellant had moved an application for impleadment under Order I Rule 10 CPC in a suit filed by the present Respondent against Mrs. Sushila Ranu Bhavnani before learned Additional District Judge (ADJ), Tis Hazari, Delhi on 17<sup>th</sup> December, 2009 and the said application was filed through Mr. Manish Chhoker, Advocate. The order sheets show that the said application was listed on many dates and the Appellant was present in Court along with Mr. Manish Chhoker, Advocate on the respective dates of hearing on 22<sup>nd</sup> May, 2010 and 11<sup>th</sup> August, 2010. It has been specifically mentioned that the suit before the Hon'ble High Court was also filed by the same counsel namely, Mr. Manish Chhoker. So, the contention of the Appellant that he had visited the High Court in 2010 and met Mr. Ajit Singh, who assured to file the suit in question is false and incorrect.

10. The Appellant had filed a criminal complaint titled ***Chatter Singh Rao v. Kamal Kumar*** before learned Metropolitan Magistrate (MM) at Patiala House in 2010 through Mr. Manish Chhoker and later on the said complaint

was withdrawn by the Appellant on 13<sup>th</sup> May, 2011 and he had himself appeared along with the counsel Mr. Manish Chhoker. Certified copy of the said order sheet is also on record.

11. The Appellant also filed another complaint bearing No.53/1/11 against the Respondent & others, which was dismissed on 17<sup>th</sup> May, 2012 and thereafter he filed criminal revision No.6/13, which was also dismissed by learned ASJ, South District, Saket on 17<sup>th</sup> September, 2013. In the said matter, one Mr. R.D. Tyagi. Advocate appeared for the present Appellant but Appellant has denied any knowledge of engaging any other counsel except Mr. Ajit Singh. Similarly, in other matters also, other counsels have independently appeared or having appeared with Mr. Arvind Kumar Tiwari. So, it has been submitted on behalf of Respondents that the averments of the Appellant made in the affidavit on oath are wrong.

12. It is interesting to note that copy of the suit available on record shows that it was filed on 16<sup>th</sup> March, 2010 through Advocate Mr. Manish Chhoker and the Appellant had appeared along with the same Advocate in the Court of learned ADJ, Central Tis Hazari on 22<sup>nd</sup> May, 2010 and the certified copy of the order sheet is on record but the allegation of the Appellant, duly supported by his affidavit, is that he only knew one Advocate Mr. Ajit Singh and he had never seen any other Advocate who was engaged on his own by the said Shri Ajit Singh. Similarly, the other Advocates had appeared on his behalf in different proceedings before the District Courts as well as the High Court but somehow, the Appellant has stuck to his stand that he knew only one Advocate, i.e. Mr. Ajit Singh and he had not seen any of his other

Advocates and it was Mr. Ajit Singh who used to get some blank papers signed from him at his residence. That stand is patently false.

13. The amount of the bank draft of Rs.3,00,000/-, received as settlement amount, was duly credited to the bank account of the Appellant as per his own averment on 10<sup>th</sup> April, 2015 and for about two years, he did not move any application for setting aside the order of withdrawal of suit, which as per his averment, was not done at his instance.

14. The Appellant has tried to find fault with the entire process of settlement on the basis of the order sheet dated 14<sup>th</sup> January, 2015 wherein it was mentioned that the parties were hopeful of settlement and the bank draft being prepared on 12<sup>th</sup> January, 2015 itself. It appears that once the compromise was being finalised, hence, the bank draft was accordingly prepared and a joint request was made for adjournment on 14<sup>th</sup> January, 2015 and immediately thereafter, the application for the withdrawal of the suit was filed on the basis of the compromise.

15. The Appellant has not approached the Court of learned Single Judge as well as this Court with clean hands and has suppressed many facts and has intentionally tried to mislead the Court for getting a favourable order suited to him on the basis of false averments. There is no apparent fault with the order dated 2<sup>nd</sup> February, 2015 by which suit bearing No. CS (OS) No.519/2010 was dismissed as withdrawn as settled and the order passed by learned Single Judge on 12<sup>th</sup> December, 2017 dismissing his application for restoration of the suit.

16. The appeal is without any merit and the same is hereby dismissed. The pending application is also disposed of.

**TALWANT SINGH, J.**

**S. MURALIDHAR, J.**

**FEBRUARY 06, 2020**

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