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

+ **CS(OS) 602/2019 & IA No.16333/2019 (u/O XXXIX R-1&2 CPC)**

HARISH KUMAR

..... Plaintiff

Through: Mr. Sushmit Mishra, Mr. Rupesh Gupta and Mr. Nikhil Kohli, Advs.

Versus

KALAWATI & ORS.

..... Defendants

Through: Mr. Yogesh Kumar Jagia and Mr. Rishabh Nangia, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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02.03.2020

1. This order is in continuation of the orders dated 22nd November, 2019, 10th January, 2020, 4th February, 2020 and 13th February, 2020.
2. The counsel for the plaintiff states that in pursuance to the order dated 13th February, 2020, though the plaintiff and his son Dr. Akshay Kumar have filed their affidavits (which are in Part V file) but neither of them are present, inspite of directions. It is stated that the son of the plaintiff communicated to Mr. Sushmit Mishra, Advocate that he is unwell and his father is performing a surgery.
3. No particulars of what is ailing the son of the plaintiff are given.
4. It is quite obvious that the plaintiff and his son are evading appearance before this Court.
5. On enquiry, it is stated that the explanation given in the affidavits filed by the plaintiff and his son is that the plaintiff was not present in the

Court and only his son was present and since papers handed over by the plaintiff to his son did not include the Sale Deed and the undertaking in Schedule V referred to in the order dated 13th February, 2020, the son gave instructions to Mr. Sushmit Mishra, Advocate that the Sale Deed and the undertaking in Schedule V did not exist. It is stated that same was mistakenly stated, in good faith.

6. It is quite obvious that the plaintiff and his son after indulging in falsehood are now filing affidavits with lame explanations.

7. It is not necessary to reiterate the happenings leading to today's order, as the same are recorded in the order in continuation whereof this order is being made.

8. It is apparent that the plaintiff has intentionally misrepresented facts before this Court and has abused the process of this Court. This is compounded further, by the failure of the plaintiff and his son to appear before this Court today inspite of direction dated 13th February, 2020 in this regard. No plausible explanation for non-appearance is given.

9. A person who had indulged in such conduct, is not entitled to proceed, even with a civil suit.

10. The counsel for the plaintiff states that the aforesaid documents have no bearing on the controversy.

11. The question is not of the bearing which the documents have, but of the plaintiff having indulged in falsehood on 10th January, 2020. Significantly, the senior counsel for the plaintiff appearing on 10th January, 2020 did not, on enquiry with respect to the documents aforesaid being

made, take a stand that the said documents were not relevant but denied the very existence of the said documents. If it was the plea of the plaintiff that the documents were not relevant, it should have been said so on 10th January, 2020, instead of denying the very existence of the documents.

12. The counsel for the defendants states that Dr. Akshay Kumar, son of the plaintiff, in his affidavit filed now, in paragraphs 5 & 9 had deposed as if he is the plaintiff when he is not the plaintiff.

13. The conduct aforesaid of the plaintiff does not entitle the plaintiff to continue with the suit.

14. The suit is dismissed, for the plaintiff having indulged in deliberate falsehood and suppression of documents on 10th January, 2020.

15. I am refraining from proceeding against the plaintiff and his son Dr. Akshay Kumar for the abuse of the process of the Court and for failing to appear today without any sufficient cause. The plaintiff however is burdened with costs of Rs.1 lac, payable to the defendants, within thirty days of today.

RAJIV SAHAI ENDLAW, J.

MARCH 02, 2020

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