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

% ***Date of decision: October 27, 2022***

+ **RFA(COMM) 73/2022**

SIR GANGA RAM HOSPITAL APPELLANT

Through: Mr. Pranam Jain, Advocate

versus

ANIL KUMAR & ORS RESPONDENTS

**Through: Mr. A.C. David and Mr. Raj Kumar
Raje, Advocate**

**CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE SAURABH BANERJEE**

J U D G M E N T (oral)

CM APPL. 43983/2022 (for condonation of delay)

1. Notice issued.
2. Learned counsel for respondents accepts notice and submits that he has no objection if the present application is allowed and the delay is condoned.
3. In view of the reasons stated in the application and the concession granted by learned counsel for the respondents, the delay of 1 day in filing the present appeal is condoned.
4. Application stands disposed of.

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5. As per facts of the case, the appellant/ original plaintiff instituted a suit for recovery of Rs. 14,70,108/- alongwith interest @ 18% per annum and pendent lite and future interest against the respondents/ original defendants before the Trial Court. As per appellant, one Mr. Subhash Kumar was admitted to the appellant Hospital on 09.05.2020 by his brother, respondent no.1 and then discharged on 12.06.2020 on the written request of his wife, respondent no.2. During this period, the said Mr. Subhash Kumar incurred a hefty Bill of Rs. 18,56,129/- towards medical treatment rendered by the appellant. After adjusting the payments of Rs. 2,49,999/- made at the time of initial deposit and Rs. 2,00,000/- received from insurance/ TPA, the appellant called upon the respondents to make the balance payment of Rs. 14,06,130/-. Upon discharge from the appellant Hospital after over a month long stay, the said Mr. Subhash Kumar succumbed to death within four days thereafter.

6. Upon completion of pleadings, following issues were framed by the Trial Court:-

- “1) Whether defendant no. 1 has no concern with dispute and wrongly impleaded in this matter?(OPD-I)*
- 2) Whether the suit is not covered under Commercial Courts Act? (OPD-1 & 2)*
- 3) Whether defendants no. 1 and 2 informed the plaintiff that defendant no. 2 and her husband had no resources and could not pay beyond the amount of Mediclaim policy but still plaintiff continued to treat patient against the wishes of the defendants and continued to add the bill?(OPD-I & 2)*
- 4) Whether the plaintiff is entitled for recovery of the suit amount as claimed for? (OPP)*
- 5) Whether the plaintiff is entitled to any interest, and if so, at what rate and for which period? (OPP)*
- 6) Relief.”*

7. Based on the pleadings and evidence led by the parties, the Trial Court vide its impugned judgment dated 25.07.2022 decided the Issue nos.1 and 2 in favour of appellant and against respondents, however, decided the Issue nos. 3, 4 and 5 against the appellant and in favour of respondents. This has led to filing of the present appeal before this Court.

8. The suit of the appellant was dismissed by the Trial Court as the appellant never filed any document(s) qua its legal constitution and existence, thus failing to prove about it being a 'society' or a 'trust'. In effect, the appellant Hospital was unable to prove its status. So much so, the original Minutes Book dated 23.10.2007 authorizing the witness PW1 to depose for and on behalf of the appellant was not produced. Not only that, the said PW1 in his cross-examination specifically admitted that the extract of meeting filed by appellant had not authorized him to depose on its behalf.

9. Further, the said PW1 simply being a legal manager of the appellant, was neither connected with its Doctors or staff members in any manner nor with the overall financial aspects, day-to-day activities, working and running of the appellant. As the whole case of the appellant was based on the aforesaid considerations, the said PW1 was held to be incompetent to depose on the facts which were not in his personal knowledge. Resultantly, the appellant Hospital never led any evidence and thus failed to prove its case.

10. The case of the appellant before the Trial Court was based on a single document, being a print out of an interim running Bill of Rs. 14,06,130/-, which again was, admitted by the same PW1, not only as unsigned but also without carrying any stamp of appellant. Be that as it may, the appellant never filed any required Certificate under *Section 65-B* of the Indian Evidence Act, 1872. Therefore, being unable to substantiate its case the appellant once again, failed to prove its case.

11. Though the appellant had instituted the suit for a hefty claim but it never substantiated its said claims with any list of facilities, treatments, medication or like provided to the patient during his over one month stay in the appellant Hospital. To be precise, the appellant, at any stage, neither showed nor brought on record any document(s) to prove the treatment administered to the deceased. Additionally, the appellant Hospital never produced any kind of Books of Accounts or financial records showing any kind of entries qua the quantum claimed by it before the Trial Court.

12. Though the appellant admitted that the respondent no.2, on 18.05.2020 and again on 10.06.2020, sought shifting of the deceased to General ICU from the Upper Class ICU categorically apprising that she was not in a position to pay the requisite charges for the upper Class ICU, however, the appellant Hospital never paid any heed to them contending that there were no beds available. But the fact of the matter is that the appellant Hospital once again failed to adduce any evidence of non-availability of the beds in the General ICU during the period of stay of the deceased to substantiate its case. Hence the non-production of the material documents qua the aforesaid was held to be fatal by the Trial Court. Resultantly, the appellant Hospital once again failed to substantiate its case with any material document(s) or any cogent evidence as required by law.

13. Thus, as noted hereinabove, the suit of the appellant was primarily dismissed on more than one count, as the appellant miserably failed to prove its case and adduce the requisite evidence thereof before the Trial Court. Alas, the position before this Court is the same as the present appeal. In fact the present appeal is not even accompanied by an application for bringing on record additional documents, if any, seeking to overcome the defects before

the Trial Court. This being so, the position is the same before us and the appellant Hospital is once again unable to prove its case before this Court.

14. Accordingly, the present appeal before this Court, being bad in law and on facts, in the wake of the well-reasoned judgment delivered by the Trial Court, requires no interference of any kind, much less issuance of notice, at this stage. We find no merit in the present appeal. Consequently, the present appeal, along with application(s), if any, is dismissed *in limine*.

15. However, despite the prolonged litigation ending in wasting the precious time of the Court(s), taking a lenient view in the matter, appellant Hospital being engaged in a Noble Cause, we hold our hands in imposing any cost(s) upon the appellant Hospital. In view thereof, no order as to costs.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

OCTOBER 27, 2022/so