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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 29th August, 2024***+ **FAO 75/2023 & CM APPL. 14920/2023****GAURAV MANGLA****.....Appellant**

Through: Ms. Malvika Trivedi, Sr. Advocate
with Ms. Manisha Singh and
Mr. Sujal Gupta, Advocates.

versus**ROHIT MANGLA****.....Respondent**

Through: Mr. Sanjiv Bahl with Mr. Pawal
Aggarwal, Advocates.

CORAM:**HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)**

1. Appellant is defendant before the learned Trial Court.
2. During proceedings of the suit in question, which is a suit for partition, the plaintiff (respondent herein) moved an application under Section 151 CPC praying therein since the defendant had not complied with the directions given by this Court and has failed to deposit the amount, as directed by this Court vide order dated 04.09.2013 passed in FAO 347/2010, his defence, in terms of the provisions contained under Order XXXIX Rule 10 CPC, be struck off.
3. The learned Trial Court, keeping in mind the specific directions passed by this Court in the abovesaid FAO, came to the conclusion that there was categorical direction to the defendant to deposit rent in the Trial Court @ Rs.1,00,000/- per month and since the abovesaid



order had not been challenged by the defendant and had already attained finality, there was no justification in running away from the aforesaid deposit of rent.

4. It was in the abovesaid situation that the defence of the defendant was struck off and such order has been challenged by filing the present appeal.

5. The copy of the abovesaid order passed in FAO has been perused.

6. The property in question, with respect to which the defendant was required to deposit the rent is 16/5, Doctors Lane, Gole Market, New Delhi. It is very obvious from the abovesaid order dated 04.09.2013 that such order was passed with the consent of the parties. Said appeal was also filed by the same appellant challenging the order of appointment of Receiver. With the consent of parties, such order of appointment was modified with certain directions to respective parties. Para 1(ii) of said order, which pertained to appellants, reads as under:-

“(ii) So far as the property bearing No.16/5, Doctors lane, Gole Market, New Delhi is concerned, which is stated to be in possession of the appellants, would continue to be in their possession and the appellants shall deposit a sum of 1 lac per month with the trial court on or before 10th day of each English calendar month with effect from 1.9.2013. This amount of 1 lac per month has been fixed on the assumption that the entire building can be let out for a sum of 5 lacs per month and the respondent at best has 1/5th share in the said property. In case the respondent is not able to show to the court that he has any right, title and interest in the aforesaid property to the tune of 1/5th share in the said property, then the aforesaid amount shall be returned or refunded to the appellants.



In any case, both these amounts so deposited by the respective parties shall be subject to such orders at the time of final disposal of the matter as the trial court may deem fit. The trial court, without being influenced, in any manner, by the observations made herein shall pass such order as it may deem fit and proper.”

7. The directions are very categoric and explicit but fact remains that despite the abovesaid order passed on 04.09.2013, not even a single penny has been deposited before the learned Trial Court.
8. Learned Senior Counsel for the appellant states that it is a suit for partition and keeping in mind the peculiar nature of the suit, the Court should not have struck off the defence, even if there was non-compliance of the abovesaid directions. It is also contended that, even otherwise, the amount was not going to be paid to the opposite side and it was only as per the eventual outcome of the partition suit that the Trial Court was to disburse the amount to the rightful claimant.
9. According to learned Senior Counsel for the appellant, even otherwise, the appellant was not able to let out the property in question and, therefore, they could not have been directed to pay the rent @ Rs.1,00,000/- per month.
10. This Court is of the considered view that such submissions being raised at such a belated stage are neither entertainable nor justifiable.
11. The abovesaid order has already attained finality and, even if, the contempt petition filed with respect to the non-adherence of the



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abovesaid direction had been dismissed that would not tantamount to hold that the defence of the defendants could not have been struck off.

12. Moreover, the accumulation of the amount is now in the vicinity of Rs.1.30 crores. The abovesaid directions are not in air and the appellants cannot be permitted to blatantly defy the same without any adverse consequence. It goes without saying that non-compliance of the abovesaid order, which has clear trappings of Order XXXIX Rule 10 CPC, can always invite striking off the defence of such erring party.

13. Viewed thus, I do not find merit in the present appeal. The appeal is, accordingly, dismissed.

(MANOJ JAIN)
JUDGE

AUGUST 29, 2024
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