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

+ **FAO(OS) 44/2024 & C.M.Nos.21144-21145/2024, 21433/2024**

MS RAMAN SHARMA

..... Appellant

Through: Mr.Mayank Bhargava with Mr.Rohit Oberoi, Advocates.

versus

MS PREM LATA PRABHAKAR AND ORS

..... Respondents

Through: Mr.Akshay Kapoor, Advocate for R-1 & 2.

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Date of Decision: 10th April, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present appeal has been filed challenging the impugned order dated 30th January, 2024 passed by the learned Single Judge in I.A. 23848/2023 in CS(OS) 20/2018, whereby the application filed by the appellant under Section 151 CPC, 1908 for recall of the order dated 16th March, 2023 passed in the subject suit was dismissed. Vide order dated 16th March, 2023, the delay of three-hundred and twenty (320) days in filing the amended Written Statement by respondent nos.1 & 2/defendant nos.1 & 2 was condoned in view of the no-objection given by the learned counsel for the appellant-plaintiff. The relevant paragraphs of the order dated 16th March, 2023 are reproduced hereinbelow:-

"1. This is an application seeking condonation of delay in filing the amended written statement on behalf of defendant nos.1 & 2.

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4. *Learned counsel for the plaintiff/non-applicant does not oppose the present application. As such, the present application is allowed and the delay in filing the amended written statement is condoned.”*

2. Learned counsel for the appellant submits that the learned Single Judge erred in not appreciating that the provision of Order VI Rule 18, CPC is mandatory and the amended Written Statement, having been filed after the expiry of the time period granted by the learned Single Judge, could not have been taken on record.

3. He contends that even if the counsel for the appellant had given his ‘no objection’ in the application filed by respondent nos.1 & 2 for condonation of delay, the learned Single Judge erred in appreciating that no concession on law of limitation can be given by a party and there is no estoppel against law. In support of his submission, he relies upon the judgment of the Supreme Court in ***State of Rajasthan & Anr. vs. Surendra Mohnot & Ors., (2014) 14 SCC 77***, wherein it has been held as under:-

“17. *It is well settled in law that there can be no estoppel against law. Consent given in a court that a controversy is covered by a judgment which has no applicability whatsoever and pertains to a different field, cannot estop the party from raising the point that the same was erroneously cited.*

18. *In Union of India vs. Hira Lal and Others[(1996) 10 SCC 574], it has been held that the concession made by the government advocate on the question of law could not be said to be binding upon the Government”.*

4. He also relies upon the judgment of the Orissa High Court in ***Sheikh Makbul vs. Union of India & Anr., 1959 SCC OnLine Ori 15***, wherein it has been held as under:-

“26. *Objections regarding limitation cannot be waived and even if they are waived they can be taken up again by the parties waiving them or by the Courts themselves : Kunclo Mal v. Daulat Ram Vidya Parkash Firm, AIR 1940 Lah 75. The Patna High Court in Pallakdhari Thakur v. Bankey Thakur AIR 1925 Pat 549, where the question as to limitation was raised in the written statement and an issue was framed but it was not pressed in the trial court,*



held that the defendants respondents were entitled to press that point on appeal. It is thus open to the parties to raise it at subsequent stage. That apart, when such issue cuts at the very root of a litigation and if the court's attention is drawn to it, it must take cognizance of the same and give its decision thereon. Mr. H. Sen however contended that the issue of limitation in the present case being a mixed question of law and fact, the defendants should not be allowed to raise it at a late stage as alleged.

27. The learned counsel relied on a decision of the Calcutta High Court in Bejoy Kumar Bhattacharjee v. (Firm) Satish Chandra Nandi, AIR 1936 Cal 382, where it was held that no doubt the plea of limitation can be urged at any stage having regard to Section 3 of the Limitation Act but when a party does take the appropriate defence but does not put before the Court materials to sustain that defence, it is difficult for the Court sitting in appeal to give effect to the defence contention and the court is justified in rejecting it. In Secretary of State v. Ananda Mohan 34 Cal LT 205: (AIR 1921 Cal 661) which was also relied on by the plaintiff, it was held that the general rule is that points of limitation should not be allowed to be raised for the first time in appeal where they involve a decision upon a question of fact; points of limitation should not be decided against the parties unless attention has been drawn to the question of limitation and an opportunity given them to meet it on evidence; if limitation is urged as bar, the facts on which it is barred must be proved after an issue has been framed.”

5. Having heard learned counsel for the appellant and having perused the paper book, this Court is of the view that since in the present case, learned counsel for the appellant had given his ‘no objection’ to the respondent’s amended Written Statement being taken on record, no appeal against the said order is maintainable, even when, filed through a ‘circuitous method’ of first filing an application for recall and then challenging that order. Section 96(3) of CPC reads as under:-

“96. xxx xxx xxx

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.”

6. This Court is further of the view that the concession given by learned counsel for the appellant on 16th March, 2023 is not a concession in law. It was a conscious waiver of appellant’s right to oppose the amended Written Statement being taken on record. Consequently, the judgment of the



Supreme Court in *State of Rajasthan & Anr. vs. Surendra Mohnot & Ors.* (supra), has no application to the present case. Further, it is settled law that a decree passed in a suit barred by limitation is not a nullity. (See: *Ittyavira Mathai vs. Varkey Varkey and Anr. AIR 1964 SC 907*). Accordingly, the judgment of the Orissa High Court in *Sheikh Makbul vs. Union of India & Anr.* (supra) offers no assistance to the appellant.

7. Consequently, the present appeal being bereft of merit is dismissed along with the applications.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

APRIL 10, 2024
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