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IN THE HIGH COURT OF DELHI AT NEW DELHI

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LPA 400/2024, CM APPL. 30396/2024 -Delay 122 days, CM APPL.
30397/2024 –Ex. & CM APPL. 30398/2024 -Delay 13 days (RF).
PRATEEK GUPTA

..... Appellant

Through: Mr. B.K. Mishra, Adv. with appellant
in person.

versus

SHILPI GUPTA

..... Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

24.05.2024

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1. The present appeal under Clause X of the Letter Patent seeks to assail the order dated 03.11.2023 passed by the learned Single Judge in CM(M) NO. 1036/2022 as also order dated 01.03.2024 passed in Review Petition No. 74/2024. Vide the impugned order dated 03.11.2023, the learned Single Judge has modified the order passed by the learned ADJ-04 (West), Tis Hazari Courts, Delhi on 26.08.2022 in CS No. 608885/2016, by reducing the costs of Rs. 40,000/- imposed by the learned ADJ to Rs. 20,000/-.
2. It may be noted that these costs were imposed by the learned ADJ for allowing the appellant's application for withdrawal of the suit filed by him in 2015. Out of this sum of Rs. 40,000/-, a sum of Rs. 15,000/- had been directed to be paid to the respondent and the remaining sum of Rs. 25,000/- was directed to be paid to DLSA, West Tis Hazari Courts, Delhi. As a consequence of the modification directed by the



learned Single Judge vide order dated 03.11.2023, while no costs are now payable to the respondent, a sum of Rs. 20,000/-, as against the sum of Rs. 25,000/- is payable to the DLSA. Being aggrieved, by this order the appellant preferred a Review Petition, which was rejected on 01.03.2024.

3. In support of the appeal, Learned counsel for the appellant submits that even though the learned Single Judge has reduced the costs imposed on the appellant from Rs.40,000/- to Rs.20,000/-, it has failed to appreciate that the appellant could not be penalised for filing the suit before the learned Trial Court. He contends that by way of the said suit the appellant was constrained to seek anti-suit injunction only on account of the misconceived proceedings initiated by the respondent before the Courts in USA. His plea being that both the learned Trial Court as also the learned Single Judge failed to appreciate that the appellant could not be blamed for the pendency of the said suit for seven years. He, therefore, prays that the impugned order be set aside and the costs imposed on the appellant be waived.
4. In order to appreciate the contentions of the appellant, it may be apposite to refer to the relevant extracts of the order dated 26.08.2022, which read as under-

“However, keeping in view the fact that the present suit is pending since the year 2015 and that the plaintiff has brought the legal machinery in motion since then and also that the defendant has been made to defend the suit for the last many years, the plaintiff is burdened with cost of Rs.40,000/-, out of which Rs.15,000/- be paid to the defendant and Rs.25,000/- be deposited in the office of the DLSA (West), Tis Hazari Courts, Delhi. The plaintiff is directed to comply with the order regarding the payment/deposit of cost within 15 days from today.”



5. Having perused the aforesaid order, we find that the learned Trial Court had imposed costs of Rs. 40,000/- on the appellant for setting the legal machinery in motion and pursuing the suit for seven years before seeking to withdraw the same. As noted herein above, out of this sum of Rs. 40,000/- a sum of Rs. 15,000/- was to be paid to the respondent. Since it is the appellant's case that he was compelled to file the suit only on account of the proceedings initiated by the respondent in USA, his grievance regarding payment of costs to the respondent may be justified. However, from a perusal of the impugned order, we find that the learned Single Judge has already taken care of this aspect and now as against the costs of Rs. 40,000/- imposed by the learned Trial Court, only a sum of Rs. 20,000/- is payable as costs and that too to the DLSA alone.
6. At this stage, so as to ascertain the reasons as to why the appellant had withdrawn the suit which he was pursuing for seven years, it may also be apposite to note herein below the contents of the withdrawal application filed by the appellant before the learned Trial Court.

"2. It is known that the defendant is not residing in Delhi for the last 3-4 years "and she is residing in Pondicherry along with the younger son Samath who is 8 years old and is also been doing his schooling from there. That the plaintiff continuing in his effort in this direction, another attempt was made by the plaintiff.

3. That the plaintiff along with his elder son Aadvik who is 10 years old and who is residing with him had gone to Puducherry to meet the defendant and also to meet his younger son. Both the parent and children have not met for the last 3-4 years and also did not have any sort of communication.

4. That both the parents and children met at defendant's residence at Aurbindo Ashram where she is engaged in the seva of mother goddess.



5. As a matter of goodwill gesture and for the benefit of the children the plaintiff is withdrawing the present suit.

Prayer : *It is prayed that this Hon'ble Court be pleased to allow the plaintiff to withdraw the present suit in the' largest interest of justice."*

7. Upon perusal of the aforesaid application we find that the suit was withdrawn by the appellant voluntarily by way of a purported goodwill gesture. Even though the appellant has, before us, vehemently urged that the suit was filed on account of the proceedings initiated by the respondent in USA, we find that in the withdrawal application there is no reference to these proceedings. In these circumstances, when the appellant is unable to deny that the suit remained pending before the learned Trial Court for over seven years, during which period the matter was listed before the Court on Forty occasions, the learned Trial Court was justified in imposing costs of Rs. 40,000/-, which costs has been further reduced to Rs. 20,000/-, by the learned Single Judge. The imposition of token costs of Rs. 20,000/-, which amount is payable to the DLSA, cannot be said to be so arbitrary so as to warrant interference of this Court.
8. The appeal being meritless is, accordingly, dismissed.

REKHA PALLI, J

SAURABH BANERJEE, J

MAY 24, 2024/acm