



2024:DHC:5747-DB



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

+ **FAO(OS) 106/2024 & CM APPL. 43785/2024, CM APPL. 43786/2024**

LATA BANSAL & ORS.Appellant

Through: **Mr. Rajat Khurana, Adv.**

versus

RAMAN KUMAR BANSAL & ORS.Respondent

Through: **Mr. Parag Kumar, Adv. for R-1.**

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Date of Decision: 02nd August, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

1. Present appeal has been filed challenging the order dated 10th May, 2024 passed by the learned Single Judge in O.A. No. 89/2024 (Original Appeal filed on behalf of Appellants against the order dated 7th February, 2024 passed by the learned Joint Registrar) in CS (OS) 404/2020 whereby the learned Single Judge dismissed the appeal filed by the Appellants herein. The Petitioner further challenges the order dated 7th February, 2024 passed by the learned Joint Registrar in CS (OS) 404/2020 whereby the right of the Appellants (Defendant no. 3, 4 & 5) to file the written statement and affidavit of admission and denial was closed.

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2. Learned counsel for the Appellant states that the Respondent No. 1 (Plaintiff) filed a suit for declaration, partition, Permanent and Mandatory Injunction on 5th December, 2020, in which the Appellants herein were arrayed as Defendants no. 3, 4 & 5 respectively. He states that on 9th December, 2020, summons were issued to all the defendants, including Defendant no. 3, 4 & 5.
3. He states that on 30th May, 2022, Defendant no. 5/Appellant no. 3 appeared in person and on behalf of defendants no. 3 & 4 and sought an adjournment to engage a counsel and for filing of written statement whereby adjournment was granted by the Registrar and the matter was adjourned to 1st September, 2022.
4. He states that an Advocate filed his vakalatnama on behalf of the Appellants but did not pursue the matter further and the Appellants were constrained to engage another counsel to contest the case.
5. He further states that on 1st November, 2022, another Advocate appeared on behalf of Appellants and apprised the court that he has been recently engaged and sought time to inspect the file and to file his Vakalatnama.
6. He states that on 21st November, 2022, a written statement was filed on behalf of Appellants vide diary no. 1915059 through a third Advocate which was re-filed subsequently on 13th January, 2023. He states that on 17th January, 2023, the Registrar noted that the written statement on behalf of Appellants was filed on 21st November, 2022 and the same was returned under objection. The Registrar further directed the Plaintiff/Respondent to file the replication to the written statement filed by the Appellants.



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7. He states that on the next date of hearing i.e. 22nd May, 2023, the Registrar noted that the written statement filed on behalf of the Appellants dated 13th January, 2023 is still lying under objection. He states that an opportunity was granted to clear the objection and to bring it on record within three weeks subject to costs of Rs. 3000/- to be paid to the Plaintiff/Respondent.

8. He states that on 11th October, 2023, the newly appointed fourth counsel cleared the objections and re-filed the written statement, along with the affidavit of admission and denial on behalf of the Appellants. He states that on 13th October, 2023, the Registrar was informed that appropriate steps for getting written statement of the Appellants have been taken, upon which the Registrar stated that the same be brought on record.

9. He states that on the next date of hearing i.e. 7th February, 2024, the said counsel had to go to USA to attend a family function, and therefore could not remove the objections and accordingly, another opportunity was sought to rectify the objections and get the written statement as well the affidavit of admission and denial on record, but the Registrar closed the right of the Appellants to file the written statement and affidavit of admission and denial of documents.

10. He states that the counsel for the Appellants again filed the written statement along with affidavit of admission and denial on 22nd April, 2024, which was not taken on record and was returned on account of order dated 7th February, 2024.

11. He contends that the written statement was initially filed on 22nd November, 2022, but the same could not come on record due to the fault on the part of the counsel engaged by the Appellants. He states that the counsel



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even after being notified of the objections with respect to filing of vakalatnama under the wrong category, failed to rectify the same and file the written statement and affidavit of admission and denial within the prescribed time limit.

12. Having heard learned counsel for the appellant, this Court finds that the right of the appellants to file a written statement was closed by the Registrar after giving multiple opportunities to clear the objections.

13. In fact, it was four years after the institution of the suit and nearly two years after the appellants had entered appearance that its right to file the written statement was closed.

14. Consequently, this Court is of the view that the appellants have been negligent and remiss in filing and bringing their written statement and affidavit of admission and denial on record. The respondent/ plaintiffs cannot be made to suffer for their negligence. Accordingly, the present appeal being bereft of merits is dismissed.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

AUGUST 2, 2024

N.Khanna