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

% Date of decision: 5th January, 2024

+ C.R.P. 5/2024

SH. DEEPAK MAURYA Petitioner

Through: Mr. Gaurav Kumar Singh, Adv.

versus

MAHOTSAV SANCHALAN SAMITI Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 548/2024 (Ex.)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. No one is present for the respondent despite service of advance notice. However, since the present Civil Revision petition raises a pure question of law, the same can be conveniently disposed of without hearing the respondent party.

4. This Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908¹ has been preferred by the petitioner, who is a defendant in the Civil Suit bearing No. 2040/2022 titled Mahotsav

¹ CPC



Sanchalan Samiti² v. Deepak Maurya & Ors.', assailing the impugned order dated 26.09.2023 passed by learned Civil Judge-02 (Central), Delhi³, whereby application of the petitioner/defendant under Order VII Rule 11 of the CPC was dismissed.

5. Shorn of unnecessary details, it appears that earlier, a suit was filed by the respondent/plaintiff for "Permanent and Mandatory Injunction" bearing No. 2620/2019 titled as 'Mahotsav Sanchalan Samiti v. Deepak Maurya & Ors.', wherein it was alleged that the present petitioner and another defendant No.2, Mr. Raj Kumar Barolia were members and the office bearers of the *Samiti* and with the permission of all the members, their tenures were terminated on 25.07.2019. The grievance of the *Samiti* was that they had been creating hindrance in smooth functioning of the *Samiti inter alia* taking away all the documents of the *Samiti* without authorization and had unauthorisedly applied for organizing and conducting the *Shobha Yatra* of **Lord Rama Sa Peer** starting from Regarpura, Karol Bagh, Delhi. Evidently, an amicable settlement was reached between the parties in the said Suit and the following order was passed by the Court on 30.08.2019:

"On behalf of defendant No.1 photocopy of certain documents have been filed. Taken on record.
During the course of arguments on application under Order 39 Rule 1 and 2 of CPC, both the parties have entered into an amicable settlement whereby the Shobha Yatra on 01.09.2019 in the honour of Lord Rama Sa Peer conducted on behalf of Mahotsav Sanchalan Samiti will be joined by plaintiff as invited by the defendant No.1. Plaintiff has undertaken that there shall be no

² Samiti

³ Civil Judge



nuisance or hindrance created from the sides of plaintiff for the Shobha Yatra. It is further undertaken on behalf of plaintiff that all the cooperation from the sides of plaintiff shall be extended in the procession scheduled for 01.09.2019.

It is submitted by defendants No.1 and 2 that they have heard the statement of plaintiff and have no objection if the plaintiff join the procession/Shobha Yatra on 01.09.2019 in the honour of Lord Rama Sa Peer conducted on behalf of Mahotsav Sanchalan Samiti. Accordingly, in view thereof, plaintiff wants to withdraw the present suit as settled.

Heard.

Let statement of plaintiff, defendants No.1 and 2 be recorded.

Separate statement of plaintiff and joint statement of defendants No.1 and 2 to this effect recorded.

In view of the statement of the parties, present suit is disposed of as withdrawn as settled.

File be consigned to Record Room. Copy of this order be given *dasti* to the parties.”

6. The grievance of the petitioner/defendant is that the same *Samiti* has now filed an instant suit bearing CS No. 2040/2020 on the same cause of action despite the fact that in the previous suit, no liberty was sought to institute a fresh suit on the same cause of action from the Court. An application under Order VII Rule 11 of the CPC was moved by the petitioner/defendant, which came be dismissed vide the impugned order dated 26.09.2023 and the operative portion of the said order read as follows:

“6. As already stated above, the defendant has filed the present application alleging that the suit is barred being hit by Order 23 Rule 1 CPC, as the previous suit was withdrawn without seeking any liberty to file a fresh suit qua the same subject matter. I find no merits in the present application as the previous suit was filed by the flag-bearers of an unregistered society claiming themselves to be a society. It is settled law that a society becomes a separate legal entity only after the same is registered under the Act. Since, at the time of making the aforesaid statement, the plaintiff society was not registered, the statement was made by Sh. Raj Kumar Barolia in his personal capacity, and the same is not binding on the plaintiff



society which was not even in existence at the time of making the aforesaid statement. Hence, the aforesaid statement and order shall not bar the present suit U/o 23 Rule 1 CPC, as the cause of action, subject matter as well as the parties of both the suits are different.

7. The present application is hereby dismissed and disposed of.”

7. Learned counsel for the petitioner/defendant has placed reliance on decisions in **Upadhyay & Co. V. State of U.P. & Others**⁴ and **Kandapazha Nadar & Others v. Chitraganiammal & Others**⁵ and it has been vehemently urged that the instant suit is barred by Order XXIII Rule 1 of the CPC.

8. At the outset, the present Civil Revision is bereft of any merits. **First things first**, it is evident that the respondent/plaintiff has been registered under the Societies Registration Act, 1860 and has become a separate legal entity. **Secondly**, the learned Civil Judge rightly observed that the statement was made by Mr. Raj Kumar Barolia in his personal capacity and same was not binding on the plaintiff society, which was not even in existence at that relevant point of time. **Thirdly**, the cause of action in the instant suit No. 2040/2022 is again in respect of the alleged hindrance/obstacles that are being orchestrated by the petitioner/defendant in organizing and conducting of *Shobha Yatra* every year, which *prima facie* is a fresh cause of action in favour of the respondent/plaintiff.

9. The cited decision in the case of **Upadhyay & Co. (supra)** has no bearing in the present matter and the ratio propounded therein is clearly distinguishable since it was a case where successive Special Leave Petitions were filed before the Supreme Court challenging the

⁴ (1999) 1 SCC 81

⁵ (2007) 7 SCC 65



order of the High Court. Although earlier, the Special Leave Petitions had been dismissed as withdrawn without seeking any liberty from the Court, and it was in the said scenario that the principle of public policy of prohibition of filing a fresh suit as contained in Order XXIII Rule 1(4) of the CPC was invoked⁶.

10. Likewise, the decision in *Kandapazha Nadar (supra)* is also distinguishable since in the peculiar facts and circumstances of that matter, it was observed as under:-

“When the court allows a suit to be withdrawn without liberty to file a fresh suit, without any adjudication, such order allowing withdrawal does not constitute a decree under Section 2(2) and it cannot debar the plaintiffs withdrawing the suit from taking a defence in the second round of litigation in respect of the subject-matter in respect of which the suit was so withdrawn. It is the provision in Order 23 Rule 1(3) (like that in Order 9 Rule 9) and not any principle of res judicata that precludes the plaintiff in a case falling thereunder from bringing a fresh suit in respect of the same matter in respect of which a suit was withdrawn without leave having been granted to file a fresh suit in respect thereof.”

11. In view of the aforesaid discussion, the statement made on behalf of the *Samiti* leading to the earlier order dated 30.08.2019 shall not construe a bar from filing a fresh suit by the respondent/plaintiff, which is a registered Society, on fresh cause of action, particularly

⁶ Sub-rule (3) says that the court may in certain contingencies grant permission to withdraw from a suit with liberty to institute a fresh suit in respect of the subject-matter of such suit.

Sub-rule (4) reads thus:

“1. (4) Where the plaintiff –

- a. Abandons any suit or part of a claim under sub-rule (1), or
 - b. Withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),
- he shall be liable for such costs as the court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.



when the parties in the two Suits are evidently different.

12. Accordingly, the present Civil Revision Petition is dismissed.

13. A copy of this order be sent to the learned trial Court for information and records.

DHARMESH SHARMA, J.

JANUARY 05, 2024

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