



2024:DHC:7908-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ LPA 947/2024, CM APPL. 55331/2024 & CM APPL. 55332/2024

NISHA MALHOTRA

....Appellants

Through: Mr. Ankit Jain, Mr. Ankit Prabhat
Deshpande, Mr. Rajesh Pandit Arya
and Mr. Saurabh Kumar Gangwar,
Ms. Radhika Bansal Advocates.

versus

NAMAN SHARMA & ORS.

..... Respondent

Through: Mr. Amit Gupta, Ms. Muskan
Nagpal, Mr. Kshitij Vaibhav, Mr.
Vikas and Mr. Akshay Narula,
Advocates (For R-2 & 3).

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Date of Decision: 08th October, 2024**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****MANMOHAN, CJ: (ORAL)**

1. Present appeal under Clause X of the Letters Patent Act, 1866, is preferred by the appellant being aggrieved by the impugned order dated 29th July, 2024, whereby the learned Single Judge has dismissed the interlocutory application bearing I.A. No.37406/2024 under Section 151 read with Order VI Rule 16(c) and Order VIII Rule 9 of the Code of Civil Procedure, 1908, in civil suit bearing CS(OS) 180/2023 captioned “*Naman*

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Sharma vs. Usha Sharma & Ors.”. By filing the said application, appellant(defendant no.3 in the underlying suit) sought to withdraw the earlier joint written statement dated 27th April, 2023, filed by Ms. Neha Sharma/respondent no.3 (defendant no.2 in the underlying suit) and consequently for taking on record the fresh written statement dated 19th July, 2024, filed by the appellant.

2. Mr. Ankit Jain, learned counsel for the appellant states that the defendants including the present appellant had filed a joint written statement to the suit filed by the respondent no.1/plaintiff opposing the reliefs sought therein. He states that the appellant along with respondent nos. 2 & 3, had taken a stand of execution of Will dated 14th July, 2017 by late Mr. Ved Prakash Sharma, father of the appellant, in favour of Smt. Usha Sharma, the mother/respondent no.2. He states that subsequently, the appellant sought to correct her stand which was contrary to the previous stand taken above. He states that the appellant sought to now support the plaintiff’s case, on the ground that the appellant was in the family way at the time she appended her signatures on the earlier written statement the contents whereof were misrepresented by the co-defendants. It is to correct the error committed earlier that the underlying applications were filed before the learned single judge which was dismissed by way of the impugned judgement.

3. On the above facts, Mr. Ankit Jain, learned counsel for the appellant succinctly argued that:-

- a. Leaving aside all the grounds raised in the underlying application or in the present appeal, the appellant is still entitled to

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drop/forego all the defences raised in earlier joint written statement filed in the underlying suit, and can still accept the case of the plaintiff in toto, at any stage of the proceedings. He emphasises that the appellant cannot be barred or prohibited from foregoing all her pleas in the written statement and admitting the claims in the suit of respondent no.1/plaintiff. Thus, the learned Single Judge could have permitted the appellant to file a separate independent written statement.

- b. He states that propounding a Will, is a matter of election/choice by the propounder and it is by choice of the said party whether or not to put the Will as evidence in the first place. He states that mere propounding of a Will would not estop the appellant from discarding the Will in question, in any subsequent stage of the underlying suit proceedings.
 - c. He also lightly touches upon the issues raised in application coupled with ones raised in the present appeal viz. circumstances and medical condition of the appellant while filing the earlier written statement before the learned trial court.
4. On the above basis, learned counsel for the appellant prays that the impugned order be set aside and the fresh written statement dated 19th July, 2024 filed by the appellant be taken on record.
5. This Court has heard the arguments of the learned counsel for the parties and perused the impugned order.



6. It appears from the arguments that the appellant/defendant no. 3 seeks to withdraw the earlier written statement supporting the stand of defendant nos. 1 and 2 and instead file a fresh written statement admitting the claim of the plaintiff and thereby, denying the stand of defendant nos. 1 and 2.

7. Similarly, the appellant/defendant no. 3 seeks to withdraw the earlier affidavit of admission/denial of documents in order to synchronize it with the new pleadings. Meaning thereby, the appellant/defendant no. 3 now seeks to admit the documents filed by the plaintiff and simultaneously deny the documents filed by defendant nos. 1, 2 and herself.

8. This was not agreed to by the learned single Judge who, *vide* the impugned order dated 29th July, 2024 dismissed the said application. The relevant paragraphs of the impugned order are extracted hereunder:-

“14. The defendant no. 3, who on her own showing is a highly educated individual cannot make a mockery of the legal process by disowning the pleadings verified by her to be true and affidavits signed by her in support thereof affirming the truthfulness of the contents therein. The defendant no.3 unequivocally admits signing the pleadings and affidavit. The explanation given by her in the application for resiling from the said pleadings have no merits. Defendant o.3 had the mental faculty and legal capacity to understand the nature of the documents she was affixing her signatures on and therefore she being executant of the affidavit to the written statement dated 27.04.2024 and the affidavit of admission/denial of documents is bound by the contents of the affidavit and pleadings .¹

14.1. If a litigant is permitted to resile from his/her pleadings on the pleas raised in this application, the legal system shall come to standstill. A perusal of the grounds set out in the application evidenced that there has been a change of heart and defendant no. 3 has unilaterally decided to take a somersault.

15. The earlier stand on affidavit affirmed by defendant no. 3 in the written statement dated 27.04.2023 and the new stand proposed by defendant no. 3 in the written statement dated 19.07.2024 are



diametrically opposite and cannot stand together. The stand in both these written statements are mutually destructive. It is settled principle of law that a defendant cannot be permitted to take mutually destructive pleas. For instance, defendant no. 3 in the earlier written statement had categorically admitted that late Sh. Ved Prakash Sharma executed a Will dated 14.07.2017; however, in the new proposed written statement the defendant no. 3 seeks to resile from the said pleading and now disputes the execution of the Will. Similar, mutually destructive pleas have been taken with respect to the ownership of the suit properties.”

9. It is clear from the above that the appellant is now taking a diametrically opposite stand to the one taken earlier in the joint written statement which are mutually destructive pleas. Though it is trite that in a written statement, inconsistent pleas can be and are permissible to be taken, yet mutually destructive pleas are prohibited. (See ***Gautam Sarup v. Leela Jetly, (2008) 7 SCC 85, Shrimoni Gurdwara Committee v. Jaswant Singh, (1996) 11 SCC 690***).

10. In the present case, this Court finds that the appellant is taking a mutually destructive plea which is now in support of the plaintiff completely. To that extent the plea that is now sought to be setup is apparently, prejudicial and detrimental to the interests of the co-defendants with whom the appellant had admittedly filed a joint written statement, taking a contradictory stand.

11. Paragraph 16 of the impugned order is also relevant for consideration and is reproduced hereunder:

“16. The object of inserting Order VI Rule 15(4) CPC was to ensure that the party verifying a pleading and deposing on affidavit is responsible for the truthfulness of the said averments. False verification is an offence punishable under Sections 227 and 229 of the Bharatiya Nyaya Sanhita, 2023. However, the significance of deposing on affidavit in a Court of law has been missed on defendant no. 3 who seems to consider the same as a mere signature on a piece of paper. To the contrary, sanctity of affidavits in legal proceedings is very high as the Courts adjudicate on the rival



claims of the parties based on the averments made on oath. It appears that defendant no. 3 presumes that replacing pleadings sworn on affidavit are like piece of clothing which can be discarded at the exchange counter of the departmental store. This Court cannot permit defendant no. 3 to make a mockery of the solemn procedure of filing pleadings accompanied by affidavits, in the manner, sought to be attempted in this application."

12. It is manifest from the above that the learned single Judge had also examined the present controversy in the light of Order VI Rule 15(4) CPC too, whereby the filing of an affidavit in support of the pleadings is envisaged. It is trite that a party cannot be permitted to resile from the admissions in the pleadings. The affidavits filed by the parties in support of their respective pleadings are solemn in nature. No party can be permitted to make a mockery of the system. If this were permissible, a party may resile from its pleadings or admissions at any time to suit its convenience. The mere thought of this situation is antithetical and abhorrent to the judicial propriety and dispensation system.

13. This Court notes the observations of the learned single Judge in paragraph 17 of the impugned order, wherein the collusiveness between the appellant and the respondent no.1/plaintiff has been noted. There is no justifiable reason for the sudden change in heart. The reasons stated, of the appellant being in the family way, at the relevant time has rightly been discarded in the impugned order. It is not disputed that the appellant is a highly educated lady and it cannot be digested that she could not understand what she was signing. It is not the case of the appellant that she was coerced or put in fear or was forcefully intoxicated and therefore, could not understand her own actions. That not being the case, it is difficult, if not nearly impossible to agree to the version put across by the appellant.



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14. Thus, this Court finds no reason to interfere with the impugned order and the appeal is dismissed accordingly.

CHIEF JUSTICE

TUSHAR RAO GEDELA, J

OCTOBER 8, 2024/rl

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