



2024:DHC:9352-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) 170/2024 & CM APPLs.69996-98/2024**

SMT MEHUL SINGH AHLUWALIA ...Appellant

Through: Mr. Manu Nayar, Advocate
versus

SH. RISHI VERMA & ORS ...Respondents

Through: None.

Date of Decision: 2nd December, 2024

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGEMENT

MANMOHAN, CJ: (ORAL)

1. Present appeal has been preferred under Order XLIII Rule 1, CPC, 1908 read with Section 10 of Delhi High Court Act, 1966 challenging the order dated 4th September, 2024 passed by the learned Single Judge in I.A. No. 23607/2023 in CS(OS) 442/2022 titled "*Smt Mehul Singh Ahluwalia vs. Sh. Rishi Verma & Ors.*", dismissing the application without deciding the factum of delay on the part of respondents in filing reply to the application.

2. Learned counsel for the appellant states that the subject suit was filed by the appellant herein for partition, rendition of account, possession, recovery of mesne profit and permanent injunction against the respondents on 25th July, 2022.

3. He states that Chapter II, Rule 4 of the Delhi High Court Rules, 2018 (for short 'Rules, 2018') provides that the Registrar shall endeavour to expeditiously dispose of all applications that are within his power under Chapter II, Rule 3 of Rules, 2018. He states that the Joint Registrar allowed the respondents to file and place on record their

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replies/rejoinder in spite of delays of around 204 days, 506 days and 535 days, even though no application for condonation of delay was filed on behalf of the respondents. He further states that the number of days of delay in filing replies/rejoinder to all the three I.As is beyond 45 days which is not permissible under Chapter VII, Rule 5 of Rules, 2018.

4. He states that when the matter was argued, it was past midnight in Canada where the appellant resides and therefore, the counsel for the appellant could not obtain instructions and due to misleading statements from the counsel for the respondents, withdrew the Chamber Appeal bearing O.A. No.122/2023. He states that the Chamber Appeal was neither argued nor dismissed on merits.

5. He states that the respondents are cleverly using delay as a tool to extend the case timelines in order to siphon off daily joint business incomes and commercial suit properties. He states that if the replies are not taken off the record and the right of the respondents to file replies is closed, the respondents will be encouraged to continue to use these delay tactics.

6. This Court has heard learned counsel for the appellant at the admission stage itself and is unable to agree with the contentions addressed.

7. At the first instance, it is pertinent to note that in the impugned order dated 4th September, 2024, the learned Single Judge has categorically recorded that Chamber Appeal bearing O.A. No.122/2023, has been withdrawn unconditionally by the counsel for the appellant. Thus, having withdrawn the said appeal before the learned Single Judge, no further appeal is maintainable thereagainst. Further, it is apparent that the appellant did not press the grounds raised in the appeal before the learned Single Judge.



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8. So far as the grievance of the appellant regarding observations of the learned Single Judge qua I.A. No. 23607/2023 in para 8 of the order dated 4th September, 2024 is concerned, it would be apposite to reproduce the same hereunder:-

“8. In view of the above, learned counsel for the plaintiff states he will issue a notice to defendant nos. 1 to 5 as per Form No. 7, Appendix 'C' of the Code of Civil Procedure, 1908 ('CPC') enlisting the documents which are required to be discovered and produced by defendant nos. 1 to 5.”

9. A perusal of the aforesaid paragraph makes it apparent that it was the counsel for the plaintiff himself who had made a statement as recorded and was not an independent observation of the learned Single Judge. This Court is unable to fathom as to what grievance the appellant could possibly have to the said statement made by her counsel. In this context, it is also relevant to note the directions passed by the learned Single Judge in para 9 of the impugned order. The para 9 reads thus:-

“9. It is directed that upon receipt of the said notice from the plaintiff, defendant nos. 1 to 5 shall offer inspection of copies as well as originals to the plaintiff as per Form No. 8 Appendix C, CPC.”

10. It is clear from the above that the learned Single Judge had in fact allowed the application bearing I.A. No. 23607/2023, in above terms as sought for by the appellant. Clearly, there can be no grievance against the aforesaid observation of the learned Single Judge.

11. In view of the above, the appeal and applications are dismissed on the grounds of non-maintainability as also lacking in merits.

MANMOHAN, CJ

TUSHAR RAO GEDELA, J

DECEMBER 2, 2024/rl

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