



2024:DHC:7116



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

Reserved on: September 12th, 2024

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Pronounced on: September 18th, 2024

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CS(COMM) 632/2016

NOOR AFSHAN

.....Plaintiff

Through: Mr. Rajat Jain, Advocate

Versus

SHIV LOCK HOUSE & OTHERS

.....Defendants

Through: Mr. Umesh Mishra and Mr. Amit Kumar, Advocates for D-4 to 5

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

I.A. 16425/2023(O 22 R 10 CPC)

1. By virtue of the present application under *Order XII rule 10* read with *Section 151* of the Civil Procedure Code [**CPC**] for substitution of the name of the applicant Mr. Abdul Wahid / son of the erstwhile/ original plaintiff (hereinafter referred to as '**applicant**') in place of the erstwhile/ original plaintiff Ms. Noor Afshan (hereinafter referred to as '**plaintiff**').

2. Learned counsel for the applicant submits that the plaintiff had authorised him to file and prosecute the present suit on her behalf for all intents and purposes and that she expired on 24.12.2020. He further submits that the said plaintiff executed a Family Settlement-cum-Agreement dated

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17.05.2016 (hereinafter referred to as the “**Agreement**”) in his favour with respect to the trademark “Koyo” qua which the present suit was instituted by her and which is still pending before this Court.

3. Learned counsel for the applicant also submits that after the demise of the plaintiff, the applicant filed an application before the Trade Mark Registry alongwith the said Agreement as also other documents. He then submits that since the applicant has become the sole owner of the trademark “Koyo”, he prays for allowing the present application and substitution of applicant as the plaintiff herein.

4. In support of his arguments, learned counsel for the applicant seeks to rely upon *Dhurandhar Prasad Singh vs. Jai Prakash University and Ors.* (2001) 6 SCC 534, *Ghafoor Ahmad Khan vs. Bashir Ahmad Khan (Dead) by Lrs.* (1982) 3 SCC 486, *Namita Ganguly vs. Manik Chand Jain* 2000SCC OnLine Cal 286, *Sheela Wanti vs. Kuldeep Singh and Ors.* 2002 SCC OnLine Del 905 and Vellaya *Grounder and Ors. vs. A.P. Ramalingam* 1997 SCC OnLine Mad 805 (hereinafter referred to as the “**Judgments (Supra)**”) wherein, according to him, under similar circumstances, similar reliefs as sought by the applicant herein, were granted by the Court(s).

5. In response, learned counsel for the defendant submits that the applicant, being the son of the plaintiff, and/ or her legal representatives had not filed any application under the mandatory provisions of *Order XII rule 3* CPC despite the plaintiff having expired way back on 24.12.2020. In fact, it is his contention that the applicant cannot be allowed to do so and the present suit already stands abated long back.



6. Learned counsel for the defendant submits that the applicant was silent throughout his cross-examination before this Court when he was appearing as PW1 for and on behalf of the plaintiff. The same itself creates a doubt.

7. Learned counsel for the defendant lastly submits that the Agreement has been executed on an insufficient stamp paper and there is no assignment or devolution of any interest of any kind.

8. At the outset, in the considered opinion of this Court, for arriving at a finding in the present application, this Court has to keep in mind that the learned counsel for applicant has today, prior to addressing his arguments in the present application, already withdrawn the application under *Order XXII rule 9(2)* CPC which was filed by him subsequent to the present application.

9. After hearing the learned counsel for parties as also upon going through the pleadings and documents on record as well as upon queries raised by this Court, it is an admitted position, *firstly* that the applicant is the son of the erstwhile plaintiff; *secondly* that the plaintiff executed the said Agreement in his favour during the pendency of the present suit way back on 17.05.2016; *thirdly* that the plaintiff left for her heavenly abode 24.12.2020; *fourthly* that the plaintiff was all throughout residing with the applicant until her demise; *fifthly* that the applicant not only filed his affidavit in evidence as PW1 for and on behalf of the plaintiff but also underwent cross-examination thereafter, and which has since been concluded long back on 25.10.2016 subsequent to the execution of the said Agreement on 17.05.2016; *sixthly* that there is no iota of mention/ whisper of the said Agreement anywhere; and *seventhly* that the applicant has all throughout continued with the same



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learned counsel.

10. It is but strange that the applicant, despite the aforesaid factors chose to silently sit over the fence for a prolonged period of more than *six years* to file the present application. In fact, there is a complete silence for the aforesaid period since and from 17.05.2016 till the filing of the present application as late as on 08.08.2023 and there is no cogent and/ or plausible explanation sought/ given by him for the said gross unexplained delay of more than *six years* therein. More so, even though the applicant had filed an application *qua* the same before the Trade Mark Registry however, the same is inconsequent before this Court. Thus, this Court cannot come to the aid of the applicant under such circumstances when the applicant himself was not diligent *qua* his rights, if any.

11. Seemingly, the applicant is trying to latch on to the bus by filing the present application as late as on 08.08.2023 upon realising that he had long since he had already missed it as his mother, the plaintiff herein, had long left for her heavenly abode on 24.12.2020. Certainly the applicant cannot overcome the same under the garb of the Agreement and/ or the present application at this belated stage when much water has already flown, more so, since the applicant being the son of the plaintiff and her other legal representatives did not take any requisite steps within the aforesaid statutory period of *three months*, for all practical purposes the present suit of the plaintiff is no more alive and thus fails. The applicant cannot seek to be clever by the half by trying to fill up the lacuna by way of the present application.

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12. Moreover, in view of the conduct of the applicant, especially as he was not only well aware of the institution and pendency of the present suit but was himself the sole witness PW1 on her behalf, there is no reason for this Court to allow the present application at this stage.

13. In the wake of the above, though the duration of the delay can be ignored and even though this Court is mindful that there is no time fixed for filing the accompanying application under *Order XII rule 10* read with *Section 151 CPC*, however, considering the peculiar facts involved enunciated in paragraph 15 hereinabove as also the inordinate lapse and delay in filing the present application and since the purported explanation given by the applicant does not exude any confidence in this Court, in the considered opinion of this Court, there is/ are no sufficient reason(s) for this Court to allow the present application.

14. Therefore, in view of all the aforesaid, there is no right to sue surviving in favour of the applicant. Resultantly, the applicant has failed to show/ prove any such reason(s) to this Court for exercising its discretion of granting him leave for continuing with the present suit against the defendant by substituting him with the plaintiff. As such, there is no reason for this Court to exercise the any discretion under *Order XX rule 10 CPC qua* the applicant.

15. The reliance placed upon ***Judgments (Supra)*** are misplaced, particularly considering the length of the period of more than *six years* involved herein and since the applicant was silent all throughout while deposing as a witness for and on behalf of the very same plaintiff even subsequent to the (alleged) execution of the Agreement prior thereto.



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16. In view of the afore-stated analysis and reasonings, the applicant has not been able to make out any case in his favour.

17. Accordingly, the present application is dismissed.

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18. In view of the aforesaid findings in I.A. 16425/2023, the present suit is dismissed being abated as also for non-prosecution. That being the position, there is no adjudication required for any of the pending application(s), including Crl.M.A. 6417/2010, as the same also stands dismissed.

19. No order as to costs.

SAURABH BANERJEE, J

SEPTEMBER 18, 2024

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