$~114

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

\+ FAO 134/2025

MANJEET SINGH AND ORS .....Appellants

Through: Mr. A.K. Singh, Mr. Ajay Kumar and Mr. Gourav Prasad, Advs. for A-1 and 3.

versus

VED PRAKASH YADAV AND ORS .....Respondents

Through: Ms. Manpreet Kaur, Adv. for R-1 to 9.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

<u>O R D E R</u>

% **14.05.2025**

1. This hearing is being conducted through hybrid mode.

<u>CM APPL. 29288/2025 – EXMP.</u>

2. Allowed, subject to all just exceptions.

3. Application stands disposed of.

<u>FAO 134/2025 & CM APPL. 29287/2025</u>

4. The appellants are preferring this appeal under Order XLIII Rule 1(F) read with Section 151 of the Code of Civil Procedure, 1908 [hereinafter referred as "**CPC**"], thereby assailing the impugned order dated 17.04.2025, passed by the learned District Judge-04, South District, whereby the defence of the appellants has been struck off for non-compliance of an earlier direction by this Court dated 19.02.2025 in CM(M) 345/2025.

5. Learned counsel for the respondents is present on advance notice.

6. The long and short of the submissions that have been made is that the parties are siblings *i.e.* seven brothers and sisters, who are the legal heirs of the deceased/Shiv Lal Yadav. The plaintiffs/respondents

have filed a suit for declaration, mandatory injunction and recovery in respect of certain amount that was left behind by the deceased in his bank account, which was apparently being jointly operated by the respondent No.1/son, who is the present appellant No.1.

7. During the course of proceedings, an application under Order XI Rule 12, 14 and 21 of the CPC was moved on behalf of the plaintiffs/respondents, thereby calling upon the defendants/appellants to produce certain documents *viz* the income tax returns of each of the defendants No. 1 to 3, who are the appellants herein for period from the year 2011 to 2017.

8. Further, another direction was passed, thereby directing the appellant No. 1 to place on record the record of the saving bank account that was being maintained by the deceased/Shiv Lal Yadav with Syndicate Bank.

9. The initial order dated 18.11.2024 whereby such application was allowed by the learned District Judge-04, South District, Saket Courts was assailed in CM(M) 345/2025, whereby the appeal by the appellants was partly allowed and they were directed to produce documents *vide* Serial No. (i) to (iii), pertaining to the production of the certified copies of the income tax record for the year 2011 to 2017.

10. Learned Senior Counsel appearing for the appellants has urged that in order to comply with the aforesaid direction, each of the appellants filed an RTI application with the Income Tax Authorities, which is at Annexure A-2 and to that replies were received from the Income Tax Authorities, which are at Annexure A-4 {collectively} to the effect that the record had been weeded out.

11. It is urged by learned Senior Counsel for the appellants that even otherwise along with their replies to the application under Order

XI Rule 12 and 14 of CPC, they had submitted all the relevant documents *i.e.* the income tax returns for the relevant years.

12. However, learned counsel for the respondents submits that the copies of the income tax return for the year 2014-15 have not been placed on the record, which would be the decisive document to show as to how and when the amount was withdrawn and the same was apparently shown as a loan advanced by the deceased's father to the appellant No. 1, which amount of over one crores rupees was wrongly misappropriated by appellant no. 1 .

13. In view of the fact that the record has since been weeded out by the Income Tax Authorities, the situation is evidently beyond the control of the appellants and they cannot produce the relevant documents. They cannot be called upon to do something which is impossible in itself.

14. Be that as it may, it is also evident that the suit was instituted by the plaintiff no. 1 in the year 2018 and later all the other siblings joined and transposed themselves as the plaintiffs. As apparently the copies of the relevant income tax record for the year 2014-2015 of appellant no. 1 has been filed on behalf of the plaintiffs/respondents, they would be entitled to lead secondary evidences in accordance with law, and if it is established that the relevant record has been deliberately withheld, the learned Trial Court may raise an adverse inference against the appellants.

15. For the time being, having regard to the fact that the deceased died intestate, insofar as the amount that was lying in his bank account is concerned and apparently an amount of Rs.1 crore was withdrawn, the shares of the remaining plaintiffs/respondents need to be protected.

16. Learned Senior Counsel for the appellants during the course of

arguments acknowledged to secure the interest of the respondents/plaintiffs, but only to the extent of Rs.15 lakhs in terms of the prayer in the plaint pertaining to respondent no.1.

17. At the cost of repetition, it is also borne out that the remaining siblings have been transposed as plaintiffs and each one is claiming around Rs.14.52 lakhs being the 1/7th share of the amount left behind by their father.

18. In view of the peculiar facts and circumstances of the case, this Court is inclined to set aside the impugned order dated 17.04.2025, whereby the defence of the appellants has been struck off for non-filing of the aforesaid documents. The impugned order is set aside.

19. However, on equitable factors, the same shall be subject to the condition that the appellants shall submit a bank guarantee or interest bearing fixed deposit in the sum of Rs.85 lakhs, within four weeks from today before the learned Trial Court, so as to secure the share of the remaining legal heirs/plaintiffs, till the final decision in the present matter.

20. This is only by way of an interim measure and without prejudice to the rights and contentions of the parties.

21. The present appeal is disposed of accordingly. Pending applications, also stand disposed of.

DHARMESH SHARMA, J.

MAY 14, 2025/*gunn/sa*