



2025:DHC:6287



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Decision: 28th July, 2025*+ EX.F.A. 25/2025, CM APPL. 45113/2025, CM APPL. 45114/2025 &
CM APPL. 45115/2025

SH. RAM DUTT SHARMA

.....Appellant

Through: Mr. Piyush Choudhary, Mr. Shashank
Verma, Mr. Shivam Goswami, Mr.
PraveenKumar Teotia and Mr.
Zulfiqar Ali, Advocates

versus

SH. BAL KISHAN

.....Respondent

Through: Mr. P.K. Rawal, Mr. Tarun Agarwal,
Mr. Rishabh Sharma and Mr. Akhil
Singh, Advocates**CORAM:****HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)**

1. The situation is little unusual here.
2. Petitioner had filed a suit before the learned Civil Judge and during pendency of the suit, an application was filed by defendant no. 1 under Order VII Rule 11 CPC. Such application was treated as one moved under Order XII Rule 6 CPC and by way of a comprehensive order, the suit has been dismissed under Order XII Rule 6 CPC on 15.05.2024.
3. However, while dismissing the suit, plaintiff has also been burdened with cost of Rs. 5 lacs (out of which Rs. 2.50 lacs is to be paid to defendant no. 1 and the balance to defendant no. 2 i.e. MCD).
4. Cost has been imposed for abusing the process of law.
5. The aforesaid order of dismissal of suit was challenged by the plaintiff by filing a *Regular Civil Appeal* which was registered as RCA No. 167/2024 and it is apprised that even such appeal has been dismissed by the learned



First Appellate Court on 28.04.2025.

6. Mr. P.K. Rawal, learned counsel for respondent (defendant no. 1 before the learned Trial Court) has appeared on advance notice and has shown the copy of such order dated 28.04.2025. The appeal has been dismissed, primarily, for the reason that the appellant could not show any justifiable reason for seeking condonation of the delay in lodging the appeal.

7. Fact remains that since there was imposition of cost, defendant no. 1 filed an Execution Petition seeking recovery of the aforesaid cost and during the pendency of the said Execution Petition, plaintiff filed Objection Petition under Section 47 CPC and also wanted stay on the operation of judgment and decree in question.

8. The aforesaid objection was taken up by the learned Executing Court on 25.04.2025, when the first appeal was still pending adjudication. While considering the aforesaid Objection Petition, the learned Executing Court took note of the fact that earlier also objection was filed, which was withdrawn and it also went on to observe that question to be determined under Section 47 CPC was pertaining to execution, discharge or satisfaction of the decree and that it was not possible for the Executing Court to go beyond the decree and it is in the aforesaid peculiar situation, the objection filed under Section 47 CPC has been dismissed.

9. Such order dated 25.04.2025 is under challenge, by filing the present appeal.

10. The prime grievance is to the effect that imposition of such excessive cost was not warranted under Section 35-A CPC.

11. Fact remains that the aspect of dismissal of the suit and imposition of cost are intrinsically interwoven and, therefore, learned Executing Court was



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fully justified in observing that it was not possible for that Court to go beyond the decree. The segregation of the two is not possible and the aspect, whether cost could have been imposed or not, is in the exclusive domain of Appellate Court.

12. Unfortunately for the appellant herein, his first appeal challenging the decree has also been dismissed, *albeit*, on a technical ground of it being filed belatedly. The aspect of dismissal of the suit and imposition of cost on the ground that there was abuse of process of law could have been appreciated by the learned First Appellate Court and since the learned First Appellate Court has already dismissed the appeal, it is, even otherwise, not permissible to deal with the aspect of imposition of cost independently, as it, obviously, does not fall within the scope and ambit of Section 47 CPC.

13. In such a situation, there is no merit in the present appeal.

14. The only recourse available to the appellant is to exhaust further judicial remedy, as available under law, and to get the decree in question upset.

15. The appeal is accordingly dismissed.

16. Needless to say, appellant is always at liberty to take appropriate steps to challenge order dated 28.04.2025 passed by learned First Appellate Court.

17. Pending applications are also disposed of in the aforesaid terms.

(MANOJ JAIN)
JUDGE

JULY 28, 2025/dr/js