

Manoj Gulshan Vs. Jai Dev Gulshan and anr.

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Court : Delhi

Decided On : Mar-25-2014

Judge : Valmiki J. Mehta

Appellant : Manoj Gulshan

Respondent : Jai Dev Gulshan and anr.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + FAO No.187/2013 25th March, 2014 % MANOJ GULSHAN Through:Appellant Appellant in person. VERSUS JAI DEV GULSHAN & ANR. Through: Respondents CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) CM No.6368/2013 (delay in refiling) For the reasons stated in the application, delay in re-filing is condoned. CM stands disposed of. FAO1872013 1. The challenge by this appeal is to the impugned order dated 6.12.2012 which has dismissed the application filed by the appellantplaintiff for recalling of the orders dated 7.10.2011 and 14.10.2011.

2. The suit filed by the appellant is a suit for specific performance, and which was pending at the stage of final arguments on 15.3.2011, when, an application was filed by the appellant-plaintiff to record further examination for exhibiting the documents by filing originals of such documents which were already on record.

This application was allowed by order dated 15.3.2011 subject to deposit of costs of Rs.1200/- with the Prime Ministers Relief Fund, and which have now been deposited though after some delay. The admitted position which emerges is that defendants in the suit were ex parte and the suit was listed for final arguments.

3. Appellant had argued his case before the trial court in person as noted in the impugned order dated 6.12.2012. I have heard the appellant who is present in person and who has made submissions that appellant will be prejudiced if documents are not allowed to be exhibited, only on the ground that only photocopies were filed, although originals of the documents were available with the appellant and which were allowed to be filed in terms of the subsequent order dated 15.3.2011.

4. Before me, relief prayed is confined to exhibiting of the documents which were already filed during the course of evidence by placing the originals of such documents on record. It is stated that thereafter final arguments would be addressed.

5. In the case of R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P.Temple and Anr. AIR 2003 SC4548 it has been held that there cannot be objections to the exhibition of documents unless objections to the exhibition are raised at the time of giving exhibit marks to the documents. In the present case, since the defendants are ex parte, the documents which have been filed by the appellant-plaintiff can be exhibited because there is no cross-examination to the same, and no objection to their exhibition.

6. Accordingly, in view of the ratio of the judgment in the case of R.V.E. Venkatachala Gounder(supra) the documents can be exhibited, however, I make no observations as to authenticity of such documents or the weight which the court below will place on the exhibited documents, and that the trial court will give its judgment based on the record of the case on hearing the final arguments.

7. In view of the above, the appeal is allowed to the extent of restoring the main suit at the stage of final arguments, and taking the documents originals of which have been already filed as exhibited, however subject to the observations with

regard to their authenticity and weight to be placed upon the same by the trial court.

8. Appellant is directed to appear before the District and Sessions Judge (Central) Tis Hazari Courts, Delhi on 6th May, 2014 and the District and Sessions Judge will mark the suit for disposal to a competent court in accordance with law. MARCH25 2014 ib FAO1872013

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