

Naresh Kumar Vs. Meer Singh (Dead) Thr His Lrs and ors

Naresh Kumar Vs. Meer Singh (Dead) Thr His Lrs and ors

SooperKanoon Citation : sooperkanoon.com/1155601

Court : Delhi

Decided On : Jul-15-2014

Judge : Rajiv Sahai Endlaw

Appellant : Naresh Kumar

Respondent : Meer Singh (Dead) Thr His Lrs and ors

Judgement :

*IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

15. h July, 2014 % FAO(OS) 41/2014 & CM No.1032/2014 (for stay) NARESH KUMAR Through: Appellant Mr. Ratnesh Bansal, Adv. with appellant in person. Versus MEER SINGH (DEAD) THR HIS LRS & ORS Respondents Through: Mr. Rajiv K. Garg and Mr. Ashish Garg, Advocates. AND + FAO(OS) 63/2014 & CM No.1582/2014 (for stay) RAJ RANI Through: Appellant Mr. Ratnesh Bansal, Adv. Versus MEER SINGH (DEAD) THR HIS LRS & ORS Respondents Through: Mr. Rajiv K. Garg and Mr. Ashish Garg, Advocates. CORAM :HONBLE THE CHIEF JUSTICE HONBLE MR. JUSTICE RAJIV SAHAI ENDLAW RAJIV SAHAI ENDLAW, J1 Both the appeals impugn the same order dated 29th November, 2013 (of the learned Single Judge exercising ordinary original civil jurisdiction in CS(OS) No.831/2006 filed by the respondent no.1 / plaintiff) of allowing IA No.3406/2013 filed by the respondent no.1 / plaintiff for rejection of the written statement filed by each of the appellants in the two appeals and ordering the removal of the written statements filed by the appellants from the

suit file and striking off the defence of the appellants.

2. Notice of the appeals was issued. We have heard the counsels for the parties.

3. The respondent no.1 / plaintiff instituted the suit from which these appeals arise for specific performance of an Agreement of Sale of land, by the respondent no.2/defendant No.1 Mr. Amar Singh, in favour of the respondent no.1 / plaintiff. The appellants in each of these appeals applied for impleadment in the said suit, claiming title to the land which was agreed to be sold by the respondent no.2 / defendant no.1 to the respondent no.1 / plaintiff. The said application for impleadment filed by each of the appellants herein was dismissed. Aggrieved therefrom FAO(OS) No.188/2010 and FAO(OS) No.195/2010 were preferred and which were disposed of vide common order dated 28th November, 2011, allowing each of the appellants to be impleaded to the suit and to file written statements but limited to the ground of their claim to the land agreed to be sold by the respondent no.2 / defendant no.1 to the respondent no.1 / plaintiff.

4. The counsel for the respondent no.1 / plaintiff argued that though each of the appellants thereafter filed the written statement but beyond the extent to which they were so permitted to file the written statements and accordingly they were directed vide order dated 7th November, 2012 of the Suit Court to file written statements confined to the aspect permitted in the order dated 28 th November, 2011, within four weeks therefrom. The counsel for the respondent no.1 / plaintiff has further contended that neither of the appellants filed the written statements within four weeks; they filed fresh written statements on 3rd January, 2013 i.e. beyond the time of four weeks given on 7th November, 2012, and that too without any application for condonation of delay. It is further informed that the fresh written statements so filed were again beyond the scope permitted by the Division Bench in the order dated 28 th November, 2011; the respondent no.1 / plaintiff thus filed IA No.3406/2013 supra for rejection of the written statements filed by each of the appellants impleaded as defendants no.2&3 to the suit.

5. The learned Single Judge has vide impugned order dated 29 th November, 2013 allowed the aforesaid IA No.3406/2013 filed by the respondent no.1 / plaintiff, observing:- (i) that the time of four weeks given on 7th November, 2012

for filing fresh written statements expired on 5th December, 2012; (ii) the written statements were filed only on 3rd January, 2013, that too without any application for condonation of delay; and, (iii) the written statements so filed on 3rd January, 2013 were also beyond the scope permitted in the order dated 28 th November, 2011 of the Division Bench.

6. Axiomatically IA No.3406/2013 was allowed and the written statements filed by the appellants, who are defendants no.2&3 respectively in the suit, were ordered to be removed and the defence of the appellants was struck off.

7. The star argument of the counsel for the appellants is that the learned Single Judge has erred in observing that no application for condonation of delay in filing the written statements was filed. It is contended that IA No.2640/2013 and IA No.2638/2013 for condonation of delay in filing the written statements were filed on 13th and 14th February, 2013 and notice whereof had also been issued. It is also contended that the written statements filed on 3rd January, 2013 were in consonance with the parameters laid down by the Division Bench in the order dated 28th November, 2011.

8. Per contra the counsel for the respondent no.1 / plaintiff has argued:- (a) that the appellants even failed to appear before the learned Single Judge on 29th November, 2013 when their written statements were ordered to be removed and their defence struck off; (b) that they have thereafter also, even though entitled to appear inspite of their defence having been struck off, failed to appear and have already been proceeded ex parte; (c) that the Suit Court has framed issues on the pleadings of the respondent no.1 / plaintiff and the respondent no.2 / defendant no.1 and listed the suit for evidence on 1st August, 2014; (d) that the appellants are merely interested in delaying the disposal of the suit, as is evident from their conduct aforesaid; and, (e) that the respondent no.1 / plaintiff on the contrary was made to deposit the entire purchase consideration in the Court and which is so lying deposited for the last eight years and the respondent No.1/plaintiff is suffering owing to the delays on the part of the appellants.

9. We have considered the rival contentions and have also perused applications filed by the appellants for condonation of delay in filing the written statements.

Though the said applications do not really show any good reason for the delay from 5th December, 2012 to 3rd January, 2013 in filing the written statement, but considering the fact that the recording of the evidence has not begun as yet, and further considering the fact that even if the suit is allowed to proceed without the appellants/defendants No.2&3, the respondent No.1/plaintiff, even in the event of success in the suit, at the time of execution, will have to deal with the appellants/defendants No.2&3 and which may cause further delays, we are of the view that these appeals should be disposed of with the following directions:A. The impugned order dated 29th November, 2013 of the learned Single Judge of allowing IA No.3406/2013 and ordering the removal of the written statement of the appellants / defendants no.2&3 and striking off the defence of the appellants / defendants no.2&3 is set aside. B. The delay on the part of the appellants / defendants no.2&3 in filing the written statements is condoned and the written statements already filed are taken on record. C. However only such of the contents of the said written statement shall be read and be permitted to be relied upon, as have been permitted by the order dated 28th November, 2011 supra of the Division Bench and any extraneous pleadings therein shall be deemed to be expunged. It will be open to the learned Single Judge to expunge such extraneous portions if any, either now or leave the same to be considered at the final stage. D. Axiomatically the order proceeding ex parte against the appellants / defendants no.2&3 is also set aside. E. All the aforesaid is subject to payment by each of the appellants / defendants no.2&3 of cost of Rs.50,000/- to the respondent no.1 / plaintiff. We may clarify that the said cost includes the cost for condonation of delay in filing the written statement, the cost of non-appearance before the learned Single Judge on the date when the impugned order was made; the cost of setting aside of the order proceeding ex parte against the appellants / defendants no.2&3 and the cost of these appeals which have been necessitated owing to the default of the appellants / defendants no.2&3 in appearing before the learned Single Judge on the date of the impugned order. The said cost be paid within one week hereof. Needless to state that if the cost is not paid, the impugned order as well as the order proceeding ex parte against the appellants / defendants no.2&3 shall remain / stand. F. The respondent no.1 / plaintiff shall be at liberty to file replication confined to the portion of the written statement permitted by the Division Bench in

the order dated 28th November, 2011 before the next date of hearing before the learned Single Judge. G. CS(OS) No.831/2006 be listed before the learned Single Judge on 25th July, 2014 for the purposes of framing of additional issues if any. Needless to state, the additional issues shall be confined to the pleas in the written statement of the appellants / defendants no.2&3 which they were permitted to take vide order dated 28th November, 2011 of the Division Bench. RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE JULY15 2014 pp

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com