

**ishwar Dayal Kansal Vs. Nirmal Nayyar**

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**Court :** Delhi

**Decided On :** Aug-28-2014

**Judge :** G. S. Sistani

**Appellant :** ishwar Dayal Kansal

**Respondent :** Nirmal Nayyar

**Judgement :**

\$~ 10 \* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision: August 28, 2014 + CS(OS) 2255/2010 ISHWAR DAYAL KANSAL Through: In person. .... Plaintiff versus NIRMAL NAYYAR ..... Defendant Through: Mr.Abhimanyu Mahajan and Mr.Milan Deep Singh, Advocates CORAM: HON'BLE MR. JUSTICE G.S.SISTANI G.S.SISTANI, J (Oral) I.A. 9929/2014 1. This is an application filed by the plaintiff seeking recall of the order dated 18.3.2014 by which right of the plaintiff to lead evidence was closed.

2. Plaintiff, who appears in person, submits that he was informed by his counsel that his file had been misplaced and in view thereof, he could not prepare and file the evidence.

3. In the application seeking recall, it has been averred in paragraph 2 that issues were framed on 16.7.2012 and plaintiff was directed to file evidence within four weeks and the case was adjourned to 27.8.2012 for fixing the dates of cross-examination. On 27.8.2012, counsel for the plaintiff sought further time for filing

affidavit by way of evidence and the case was adjourned to 22.1.2013. On 22.1.2013 the plaintiff had appeared in person and sought further time to file list of witnesses and affidavits. Eight weeks time was granted and the matter was adjourned to 1.8.2013. On 1.8.2013 the plaintiff had sought an adjournment on the ground that he had misplaced his file. Costs of Rs.5,000/- was imposed and the matter was adjourned to 19.12.2013 and thereafter to 18.3.2014.

4. The application also suggests that on 4.4.2014 plaintiff applied for certified copy of the order of 18.3.2014 and also certified copies of the written statement and documents, to enable him to re-construct his file. As per paragraph 9 of the application, certified copies of the documents were received by him on 25.4.2014. The plaintiff prays for recall of the order on the ground that delay in filing the affidavit is not on his account but on account of the file being misplaced by his advocate.

5. The application is vehemently opposed by counsel for the defendant, who submits that the plaintiff has been highly negligent in pursuing the matter. It is submitted that the present suit is not maintainable, as it has been filed beyond the period of limitation and has been filed only with a view to harass a 80 year old lady. It is submitted that the application is not supported by the affidavit of the counsel and further the application itself would show that the plaintiff did not apply for certified copy of the plaint, thus he could have filed his evidence and further this fact is also admitted by the plaintiff during the course of argument that copy of the plaint was available with him.

6. Counsel for the defendant further submits that at no stage, the plaintiff requested the defendants counsel for another copy of the written statement, which he would have gladly given, as is the practice.

7. Counsel for the defendant has also drawn attention of the court to paragraph 27 of the plaint, which reads as under:

27. The cause of action first arose on 12th October, 2006, when the agreement to sell is executed between the parties and further on 31st December, 2006 when the defendant failed to hand over the vacant possession of the aforesaid property to

the plaintiff, again on 9th July, 2007 when the plaintiff approached the defendant and handed over draft sale deed for approval. Further the cause of action arose on 12th October, 2007 when the plaintiff reached the office of the sub-registrar-IV Meerut to resolve the issue and for completion of sale formalities but defendant failed to reach there on giving date and time and further on 24.9.2010 when plaintiff issued the legal notice through his advocate asking the defendant to pay Rs.50,000/- within 15 days from the date of notice and the cause of action is subsisting till date.

8. Counsel for the defendant submits that a mere reading of paragraph 27 would show that assuming the averment made in this paragraph are treated to be correct, the cause of action accrued in favour of the plaintiff on 12.10.2007 when according to the plaintiff he reached the office of sub-Registrar but the defendant failed to reach. It is submitted that the suit has been instituted on 16.10.2010, which is beyond the period of limitation and issuance of legal notice cannot extend the limitation.

9. I have heard the plaintiff and counsel for the defendant and carefully perused the order sheets. As per the plaint, the plaintiff had entered into an agreement to sell with defendant. A sum of Rs.10.0 lacs was paid as an advance. The present suit pertains to recovery of principal amount of Rs.10.0 lacs and damages to the tune of Rs.40.0 lacs.

10. The order sheets reveal that the court had granted four weeks time to the plaintiff to file affidavit by way of evidence on 16.7.2012 and listed the matter before Joint Registrar on 27.8.2012. On 27.8.2012 further time was sought by counsel for the plaintiff to file affidavit and list of witnesses, however, no grievance was made that he had lost his file. Four weeks time granted by the court had lapsed but CS(OS) 2255/2010 no application for Page 3 of 4 extension of time was made. Similar request was made on 22.1.2013 and again no application for extension was filed. It is only for the first time on 1.8.2013 that it was brought to the notice of the Joint Registrar that the plaintiff had mis-placed his file.

11. What is surprising is that even after the certified copies were received by the plaintiff, as per his own showing on 25.4.2014, neither any formal application for

extension of time was filed, nor evidence has been filed till date.

12. I am of the view that sufficient opportunities were granted to the plaintiff since 16.7.2012 to lead evidence, however, the plaintiff has chosen not to lead evidence. The present application is not supported by the affidavit of the counsel who has lost the file. There is no explanation as to why even after receipt of the certified copies, evidence has not been filed till date. Accordingly, no grounds are made out to entertain the present application and the same is dismissed. IA.No.16346/2014 [u/O.14 R-2(2) CPC].

13. In view of the order passed in IA.No.9929/2014, the present application is not pressed. Dismissed as not pressed. CS(OS) 2255/2010 14. Since there is no evidence to support the averments made in the plaint, the present suit is dismissed. G.S.SISTANI, J AUGUST28 2014 ssn

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