IN THE COURT OF SH. VIPIN KHARB
SCJ-CUM-RC (CENTRAL): TIS HAZARI COURTS: DELHI

Doc Filing – 27645/16

Jawahar Lal Goyal
S/o Sh. B. S. Goel
R/o 4/71, Bhola Nath Nagar, Shahdara
Delhi – 110032 … Appellant

Vs.

1. Sanwal Dass Gupta
   R/o 2741, Gali Arya Samaj
   Bazar Sita Ram, Delhi – 110006

2. Syed Khalil Ahmed
   R/o 992, Gali Neemwali,
   Ballimaran, Delhi – 110006

3. Sh. Shobha Kant Jha
   R/o 2741, Gali Arya Samaj,
   Bazar Sita Ram, Delhi – 110006

4. Irshad Ahmed
   R/o Chabak Swaran, Lal Kuan
   Delhi – 110006

5. Sh. Bhagwat Swarup Saxena
   R/o 1781, Lal Kuan, Delhi – 110006

6. Smt. Nona Devi W/o Sh. Jagan Nath
   215, Chah Shor, Meerut Gate
   Hapur, UP-245101

7. Sh. R. S. Chauhan, SHO
   PS Hauz Qazi, Delhi - 110006 … Respondents

ORDER

18.01.2020

1. Appellant namely Jawahar Lal Goyal filed present appeal against order passed by Ld. Trial Court dated 01.07.2015. Appellant herein was plaintiff before Ld. Trial Court and respondents herein were defendants before Ld. Trial Court. In my subsequent paragraphs, I will be referring parties with the same designations with which they were referred before Ld. Trial Court, in order to avoid confusion.

2. For the sake of brevity, Trial Court record shall be considered part of the appeal.

3. Vide the present order, I shall dispose off the appeal against the order dated 01.07.2015 against the dismissal of suit on the grounds of non compliance of Hon'ble High Court's order dated 22.09.2014 by not amending the plaint to convert the suit for injunction to suit for possession and not paying the requisite court fee.

4. Perusal of the order dated 22.09.2014 passed by Hon'ble High Court of Delhi shows that the Ld counsel for the plaintiff gave his willingness for paying court fee for the relief of possession as per Sec. 7 (v) of the Act.

5. On the perusal of trial court record shows that the trial court directed the plaintiff to amend the plaint and to seek the relief of possession after filing proper court fee but on the next date of hearing i.e.

on 11.02.2015, the plaintiff was absent because of which a court notice was issued to the plaintiff and he was directed to be present in person on the next date of hearing. Even though the plaintiff appeared on the next date of hearing but he sought some time to take appropriate steps on which the Ld Trial Court gave last and final opportunity. On 01.07.2015 the Ld. Trial Court once again gave last and final opportunity to deposit the court fee subject to a cost of Rs.5,000/- to be paid to the defendants, on which the plaintiff submitted that he is unable to pay the cost and in default of payment of cost the suit was dismissed by the Ld. Trial Court.

6. Perusal of the appeal record shows that on many occasions plaintiff failed to take steps for effecting service of notice of appeal upon various respondents despite repeated directions of court as noted in ordersheets dated 16.02.2016, 19.04.2016, 18.07.2016, 28.09.2016, 16.11.2016, 17.01.2017, 27.07.2017, 06.02.2018, 31.03.2018, 26.05.2018 and 03.10.2018. Further, it is also observed that the plaintiff has sought many adjournments on various occasions for various reasons. Record further reveals that on 22.12.2015, 19.04.2016, 18.07.2016, 28.09.2016, 05.09.2019 and 24.10.2019 proxy counsel for appellant only appeared and on 06.12.2019 and 13.12.2019 only clerk of the counsel for the plaintiff appeared and on 16.11.2016, 27.07.2017 and 03.10.2018 none appeared on behalf of the plaintiff.

The net result is that on various occasions steps were not taken by plaintiff and on various occasions proxy counsel for plaintiff appeared. Vide order dated 17.01.2019, the Ld. Predecessor of this court specifically observed that this appeal is simply filed to engage the defendants and

nothing else.

7. On various occasions cost was also imposed upon the plaintiff i.e. vide order dated 16.11.2016 a cost of Rs.2000/- was imposed, vide order dated 26.05.2018 a cost of Rs.10,000/- was imposed though same was waived off and vide order dated 17.01.2019 cost of Rs.5,000/- was imposed. But not even on a single occasion any cost was paid by the plaintiff, which corroborates his conduct in the Trial Court, where he refused to pay the cost imposed.

8. Also if the plaintiff had any genuine intention of fighting the suit, he would have shown so by paying the cost and by depositing the requisite court fee. But it is apparent on the face of the record that the conduct of the plaintiff does not fall in line with the averments made in the appeal and he has simply filed this appeal to engage the respondents and for no other purpose, hence, court is of the opinion that the impugned order of Trial Court was correct. Same shall not be interfered with. Appeal accordingly stands dismissed.

Announced in the open court
on 18th January, 2020

(Vipin Kharb)
SCJ-cum-RC:Central District
Tis Hazari Courts, Delhi