

(2018) 09 DEL CK 0349

Delhi High Court

Case No: First Appeal From Order No. (Os) 41 Of 2018

Pannalal Rathore & Anr

APPELLANT

Vs

W.H. Deeth
(Ballabgarh) & Co

RESPONDENT

Date of Decision: Sept. 27, 2018

Acts Referred:

Delhi High Court Act, 1966 & Section 10#Code of Civil Procedure, 1908 & Order 43 Rule 1

Citation: (2018) 09 DEL CK 0349

Hon'ble Judges: Rajendra Menon, CJ; V. Kameswar Rao, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Rajendra Menon, CJ

C.M.No.9653/2018 (delay)

1.For the reasons stated in the application, the delay in filing the application is condoned and the application is disposed of.

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2. This appeal filed by the plaintiffs/appellants under Order XLIII Rule 1 of the Code of Civil Procedure read with Section 10 of the Delhi High Court

Act calls in question the tenability of an order dated 15th January, 2018 passed by the learned Single Bench in O.A.No.7/2018 whereby the right of

the Appellant to lead evidence has been closed. Even though the learned counsel made various submissions to contend that on the date the case was

listed for evidence, due to certain reasons attributable to counsel's personal difficulty, the witnesses could not be produced. On going through the

orders available on record, it seems that the Joint Registrar closed the right of evidence of the Appellant and against the same an appeal was filed

before the learned Single Bench and the learned Single Bench also rejected the same.

3. On going through the concurrent orders passed by the Joint Registrar and the learned Single Bench, it is clear that in spite of repeated opportunities

being granted and after costs were imposed on three occasions, that is, Rs.20,000/-, Rs.5,000/- and Rs.20,000/- respectively, the witnesses were not

kept present and, therefore, the right to lead evidence was closed. In para-24 the finding recorded is that the plaintiff/Appellant has availed five dates

of hearing over a period of one year for leading evidence. Repeated warning given with regard to last opportunities being granted did not yield any

positive result and even if the counsel was unable to appear on 14th /15th December, 2017, the learned Single Bench found that the witnesses could

have been kept present for cross-examination. Taking note of the manner in which the plaintiff was delaying the proceedings, by a detailed order

passed the learned Single Bench rejected the application.

4. The discretion exercised by the learned Single Bench and the reasons given cannot be termed as illegal and perverse to the extent that interference

in the matter is called for.

5. Accordingly, finding no ground, the appeal stands dismissed.