2024:DHC:1375

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*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+   RSA 94/2019

RAKESH KUMAR SHARMA   .... Appellant
                        Through: Ms. K. Kiran, Advocate.

                        versus

MOTHER DAIRY FRUIT & VEGETABLES PVT LTD
                                             ..... Respondent
                        Through: Mr. Raj Birbal, Senior
                        Advocate with Ms. Raavi Birbal, Advocate.
        CORAM:
        HON'BLE MR. JUSTICE C. HARI SHANKAR

                        JUDGMENT (ORAL)
%   **21.02.2024**

RSA 94/2019

1.   This is a truly peculiar case.

2.   The impugned order dated 28 November 2018 has been passed
by the learned Additional District Judge (the learned ADJ) in RCA
No. 35/2016 (*Mother Dairy Fruit & Vegetables (P) Ltd. v. Rakesh
Kumar Sharma*) ("*Mother Dairy*", hereinafter). The judgment of the
learned ADJ was in favour of Mother Dairy and against Rakesh
Kumar Sharma.

3.   The present appeal purports to challenge the said judgment.
Rakesh Kumar Sharma has been arrayed as the appellant in this
appeal.

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4. Only, Rakesh Kumar Sharma incidentally went missing on 27 September 2018, even before the impugned judgment was reserved by the learned ADJ.

5. Rakesh Kumar Sharma has, admittedly, never even had an opportunity to see the impugned judgment, much less take a conscious decision to appeal against it.

6. He, therefore, is admittedly completely unaware of this appeal, filed in his name and on his behalf.

7. The present appeal, needless to say, is not signed by Rakesh Kumar Sharma, as he went missing before the impugned judgment was passed. Nor is it accompanied by any Vakalatnama authorising the learned Counsel Ms. Kiran, who has filed the present appeal, to prosecute this matter.

8. The appeal, and all accompanying affidavits and documents, bear the signature only of Ms. Kiran.

9. Ms. Kiran relies on a Vakalatnama signed by Rakesh Kumar Sharma, *at the stage when the matter was pending before the learned Trial Court*, authorising her to represent him in appellate proceedings before the High Court as well.

10. The fact remains, however, that Rakesh Kumar Sharma went missing even prior to passing of the judgment. The present appeal has, therefore, not been filed on instructions given by Rakesh Kumar

Sharma.

11. Ms. Kiran submits that, as she is the sister of Rakesh Kumar Sharma, she is certain that, had he been available after the impugned judgment dated 28 November 2018 had been passed, and he had an occasion to see the impugned judgment, he would certainly have desired to file the present appeal.

12. To a query from the Court as to how Ms. Kiran can be sure that her brother, had he been there to see the impugned decision when it was rendered, would have desired to appeal against it, her response is, "I know he would. Who wouldn't?"

13. This intricate exercise of psychoanalysis of Rakesh Kumar Sharma, undertaken *in absentia* (as Rakesh Kumar Sharma went missing even before the impugned judgment was passed), cannot authorize the filing of the present appeal on behalf of a person who has never even seen the impugned order, much less taken a decision to file an appeal against it, or instructed its filing.

14. Such a practice, if allowed, can lead to catastrophic consequences. On the pretext that the unsuccessful party before the Court below is not available, or traceable, any third party can file an appeal, on behalf of the missing unsuccessful party, behind his back and without his knowledge, and, needless to say, without any authorization from him whatsoever. The rights of the unsuccessful party can, thereby, be seriously prejudiced, and may, in a given case, even lead to irreparable harm.

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15. At the end of the day, an appeal can be filed, on behalf of a litigant, only if he wants it to be filed, and by a person whom he authorizes in that regard.

16. The present appeal is, therefore, completely incompetent. It is, accordingly, dismissed.

CM APPL. 20500/2019, CM APPL. 37837/2022 and CM APPL. 12242/2023

17. These applications do not survive for consideration and stand disposed of.

C.HARI SHANKAR, J

FEBRUARY 21, 2024/ssc

Click here to check corrigendum, if any