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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 10th February, 2015

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CM(M) 39/2015 & CM 797/2015 (stay)

HALDIRAM BHUJIAWALA & ANR Petitioners

Through: Mr. C. Mukund, Mr. S.M. Vivek
Anandh, Ms. Yaamini Sharma and
Mr. Abhilash Attri, Advocates.

versus

ANAND KUMAR DEEPAK KUMAR & ORS Respondents

Through: Mr. Amarjit Singh, Mr. Mahendra
Rana and Ms. Sadhvi Saraf,
Advocates.

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CM(M) 43/2015 & CM 886/2015 (stay)

HALDIRAM BHUJIAWALA & ANR Petitioners

Through: Mr. C. Mukund, Mr. S.M. Vivek
Anandh, Ms. Yaamini Sharma and
Mr. Abhilash Attri, Advocates.

versus

ANAND KUMAR DEEPAK KUMAR & ORS Respondents

Through: Mr. Amarjit Singh, Mr. Mahendra
Rana and Ms. Sadhvi Saraf,
Advocates.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

1. The present petitions are being disposed of by a common order as the facts leading to the filing of the petition are common.
2. In CM (M) No.39/2015 the Petitioners challenge the order dated 1st December, 2014 whereby their application under Section 151 CPC filed on

9th September, 2014 seeking recall of the order dated 16th August, 2014 and directions of deposition of the second Plaintiff witness namely Shiv Kishan Aggarwal, PW-2 to be recorded before the learned Local Commissioner within the premises of the Court was sought.

3. In CM (M) No.43/2015 the Petitioner impugned the order dated 9th January, 2015 wherein the application dated 10th December, 2014 under Section 151 CPC praying extension of time for examination of PW-2 Shri Shiv Kishan Aggarwal by Commission at Nagpur was dismissed.

4. Vide order dated 16th August, 2014 the learned Trial Court had disposed of four applications and passed directions for examination of PW-2 Shri Shiv Kishan Aggarwal by way of Commission to be executed on his native place and the Commission was to be executed between 1st September, 2014 to 15th September, 2014 inclusive of all days from 10.00 AM to 4.00 PM. On 27th August, 2014 the Defendants filed another application under Section 151 CPC seeking stay of the operation of the order dated 16th August, 2014 of the learned Trial Court which was dismissed vide order dated 28th August, 2014. The said order was challenged before this Court in CM (M) No.808/2014. The order dated 16th August, 2014 was also challenged in CM (M) No.821/2014. Both these petitions were dismissed on 8th September, 2014 by this Court. The ground on which the Petitioners sought recalling of the order dated 16th August, 2014 is that PW-2 was directed to be examined on Commission at Nagpur in view of the medical certificates of PW-2 produced by the Plaintiffs. However, subsequently, it came to the notice that PW-2 Shri Shiv Kishan Aggarwal had gone to Bikaner, Rajasthan on 27th August, 2014 to attend a family function and as he could travel outside Nagpur to a place at Bikaner he could appear before

the Local Commissioner in the Court premises and get his evidence recorded. Further by filing the medical certificates and claiming that PW-2 could not come to Delhi for examination though he was hale and hearty and travelled to Bikaner, fraud was played on the Court. The learned Trial Court dismissed the application on the ground that as per the medical certificate PW-2 was unwell and if he takes the risk of going to Nagpur that is his wish however, the Court would not compel him to come to Delhi for examination.

5. After the application for recalling of the order dated 16th August, 2014 was dismissed on 1st December, 2014 the Plaintiff filed an application under Section 151 CPC on 10th December, 2014 praying for extension of time for examination of PW-2 Shri Shiv Kishan Aggarwal by Commission at Nagpur. The Court thus directed execution of Commission between 19th January, 2015 to 4th February, 2015 inclusive of all days except for holidays which the parties may take into account. The Petitioners sought extension of time to examine PW-2 which was dismissed vide order dated 9th January, 2015 impugned in CM (M) No.43/2015. Since no stay was granted by this Court in the meantime, the Commission has been executed and PW-2 has been examined on Commission at Nagpur. He has also been cross-examined by the Petitioners.

6. In the meantime, the Petitioners had also challenged the order of this Court dated 8th September, 2014 wherein the order dated 16th August, 2014 was challenged which Special Leave Petition has been dismissed by the Hon'ble Supreme Court on 30th January, 2015.

7. As regards CM (M) No.43/2015 seeking extension of time for examination of PW-2 is concerned the same has become infructuous as the PW-2 has already been examined and is dismissed as such.

8. As regards recalling of the order dated 16th August, 2014 in view of the subsequent event is concerned, the order dated 16th August, 2014 having attained finality till the Hon'ble Supreme Court and PW-2 having been examined, no further orders are required to be passed by this Court.
9. Petitions and applications are dismissed as infructuous.

(MUKTA GUPTA)
JUDGE

FEBRUARY 10, 2015
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