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

+ RFA 593/2014 and CM No.19193/2014 (stay) and 19195/2014
(for additional evidence)

TRENDSETTERS

..... Appellant

Through: Mr. L.K. Singh and Mr. Sonal Sinha,
Advocates

versus

NORTH DELHI POWER LIMITED

..... Respondent

Through: Mr. Manish Srivastava, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

25.08.2015

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1. This appeal is directed against the judgment and decree dated 23.08.2014.
2. By virtue of the impugned judgment, the trial court has dismissed the suit principally on the ground that the appellant / plaintiff's plea of being a registered partnership firm, was not supported by requisite documents.
 - 2.1 The other reason, which propelled the trial court to dismiss the suit was that the action had been instituted by the appellant / plaintiff via its special power of attorney holder, one, Mr. Parminder Singh Bhullar; without relevant document authorising him to do so, being brought on record.
 - 2.2 The document in issue which ostensibly authorised Mr. Parminder Singh Bhullar to institute the suit is a special power of attorney dated 20.03.2006 (in short the SPA).
 - 2.3 Furthermore, the trial court has also made observations with regard to

the ostensible defect in the SPA dated 14.11.2007 (Ex. PW1/A), issued in favour of one Mr. Girish Kumar (PW-1).

2.4 The rationale provided in the trial court judgment, is that, the affidavit of Mr. Girish Kumar (PW1/A) was not attested by a notary public.

2.5 I may only indicate, at this stage, that towards the end of its judgment, the trial court has made an observation, to the effect, that even otherwise the entire evidence proffered by Mr. Girish Kumar (PW1) is in the nature of a hearsay.

3. Having heard the learned counsel for the parties, what has emerged from the record is that the appellant / plaintiff did place on record the photocopies of the partnership deed and the registration certificate. It appears that the appellant / plaintiff had also placed on record the original SPA dated 20.03.2006, issued in favour of Mr. Parminder Singh Bhullar.

3.1 The reference to these documents was made in fact by the appellant / plaintiff in its review petition filed with the trial court.

3.2 The averments to this effect are made in paragraph 2 of the said review petition.

3.3 Apart from the above, what has also been brought to fore is, that in the affidavit of evidence (examination-in-chief) of PW-1, there is no reference to either the registered partnership deed or the SPA dated 20.03.2006, which is, said to have been issued in favour of Mr. Parminder Singh Bhullar.

3.4 The fact that the documents were otherwise available on record was somehow missed by the trial court. What has also emerged is that the respondent / defendant did not take a specific objection; at least, not in so many words with regard to the factum of registration of the appellant /

plaintiff firm. The respondent / defendant, though, has averred in the written statement that facts contained in paragraph 1 of the plaint, which pertained to the factum of registration of the appellant / plaintiff firm, were required to be proved by it, as these were facts, which were, in its sole knowledge.

3.5 It appears that since this objection was not articulated at the time of framing of issues, no such issue was struck with regard to the maintainability of the suit. The only issues, which the trial court framed, are set out in paragraph 8. None of the issues framed pertained either to the maintainability of the suit or questioned the authority of Mr. Parminder Singh Bhullar, to institute the action.

3.6 As indicated above, it is these two aspects which, primarily propelled the trial court to dismiss the suit.

3.7 As regards the third aspect, which is that, the SPA dated 14.11.2007 (PW-1/A) was not notarised. In my view, the conclusion arrived at by the trial court in this behalf is flawed. Mr. Girish Kumar (PW-1), to my mind, could have tendered his testimony even without an SPA. This conclusion is, fairly, not contested by Mr. Manish Srivastava, the learned counsel for the respondent.

4. In these circumstances, the impugned judgment and decree is set aside and the matter is remanded to the trial court with the following directions :-

(i). The parties will be permitted to file additional evidence in respect of the following additional issues :

(a). Whether the plaintiff is a registered partnership firm? OPP

(b). Whether the suit has been instituted by a duly authorised person? OPP

4.1 I may only indicate that the aforesaid issues have been framed with

the consent of the learned counsel for the parties, who have accepted that, broadly, these two issues were present to the minds of the parties, notwithstanding the lack of precision in the pleadings.

4.2 It is also made clear that if parties require to lead additional evidence, it would be confined only to aforementioned issues.

4.3 In so far as other aspects are concerned, the evidence filed by the parties, which is already on record, will be taken into account by the trial court in arriving at its decision in the matter.

5. Since, the appellant had the benefit of the interim order dated 24.03.2006, passed by the trial court, on its application under Order 39 Rule 1 and 2 of the CPC, the same shall continue to obtain during the pendency of the matter before the trial court.

6. The parties and their counsels shall appear before the trial court on 14.09.2015.

7. The Registry will despatch a copy of the order passed today to the trial court.

8. With the aforesaid directions in place, the captioned appeal and the pending applications are disposed of.

RAJIV SHAKDHER, J

AUGUST 25, 2015

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