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

+ **FAO(OS) 423/2015**

DR J K JAIN

..... Appellant

Through: **Mr.Sanjiv Kakra, Ms.Vaishali Kakra
and Mr.Irfan Ahmed, Advocates**

versus

M/S SCINDIA POTTERIES AND SERVICES LTD & ANR

..... Respondents

Through: **Nemo.**

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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12.08.2015

C.M.No.13657/2015 (for exemption)

Exemption is allowed subject to just exceptions.

Application is disposed of.

FAO(OS) 423/2015

1. The appellant has preferred this appeal against an order of the learned Single Judge dated 23.03.2015. That order upheld the decision of the Joint Registrar declining the appellant's/defendant's application seeking amendment of the list of witnesses. The appellant was arrayed as a defendant in CS (OS) 1311/2001 seeking mandatory injunction. According to the plaintiff, the appellant was a licensee of the premises which was given to him as a Director. The appellant's defence inter alia was that the resolution relied upon by the plaintiff

company, would not have been made since the late Rajmata Vijaya Raje Scindia (hereinafter referred to as 'Ms. Scindia') was not in a fit condition at the relevant time when she participated in taking such decisions. For the purposes of the present appeal, it is sufficient to notice that the issue no.10 constructed by the court concerned genuineness of a certain board resolution of the company. The trial in this case commenced in 2006. Plaintiff has closed its evidence after examination of four witnesses. The appellant/defendant has till date examined about 31 witnesses. At this stage, the appellant/defendant sought for amendment of the list of witnesses claiming the need to summon certain medical records from Bridge Candy Hospital, Mumbai and Apollo Hospital, Delhi and consequently the concerned individual holding custody of such record. This according to the appellant could have been done only at an advanced stage of the trial, given that under normal circumstances such records would be destroyed. However, the appellant relied upon the circumstance that in a related suit the depositions of common witnesses reveal that such records did exist and a certified copy of such record was produced.

2. Learned Joint Registrar who dealt with the application of amendment of the list of witnesses, at the first instance, declined to accept it. The appellant challenged the decision in a Chamber Appeal by way of O.A.67/2013 before the learned Single Judge who has upheld the order. In the course of the impugned order the learned Single Judge has noticed that the trial commenced long ago and that 249 listings of the suit had occurred and at this late stage it is neither appropriate nor advisable to grant the request for amendment of the

list of witnesses. Mr. Kakra, learned counsel for the appellant urged that the impugned order is in error and that no prejudice would be caused to the respondent given that the records were produced in the other suit i.e. CS (OS) 182/2002, preferred by the appellant/defendant. It was also submitted that the defendant's/appellant's application in CS (OS) 1311/2001 requesting for consolidation has not been decided. It is stated that the application was filed in 2013.

3. We have considered the submissions. The reasons which persuaded the learned Single Judge to decline exercising jurisdiction of permitting amendment of the list of witnesses appears to be that Order 16 Rule 1 (3) of CPC merely confers a discretionary power upon a court to permit amendment of list of witnesses which cannot ordinarily be claimed as a matter of right. Issues were framed in this case on 16.05.2005 and the trial commenced. Thereafter, several witnesses have been examined and numerous dates of hearing have taken place. Having regard to these circumstances, the fact that subsequent developments may have led to discovery of material *ipso facto* could not compel the court to exercise jurisdiction in the manner that the appellant seeks.

4. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 12, 2015/rb