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

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Date of Decision : 29th July, 2015

CM(M) 630/2015

RAKESH KUMAR

..... Petitioner

Through: Mr.Rajesh Baweja, Advocate.

versus

PAWAN KHANNA

..... Respondent

Through: Mr.Rajesh Kumar, Advocate.

PRATIBHA RANI, J. (Oral)

CM(M) 630/2015

1. Aggrieved by the order dated 29th June, 2015 whereby the application of the petitioner moved under Order 8 Rule 1A read with Section 151 CPC has been dismissed by the learned ARC, the petitioner preferred the present petition.
2. Vide impugned order, the learned ARC declined the permission to the petitioner to place on record certified copies of the documents in respect of the other properties owned by respondent/landlord, to demonstrate that the eviction petition filed by the respondent/landlord seeking eviction of the petitioner/tenant from the suit premises was not to meet his bonafide requirement.
3. The learned Trial Court after quoting the provisions of Order 8 Rule 1A CPC dismissed the said application observing as under:-

‘The present case is at the stage of cross-examination of the petitioner and this Court of the opinion of that the respondent is having very much opportunity available to him to produce any document during the cross-examination of petitioner’s witnesses. Therefore no purpose would be served by allowing the application as no justified reason has been assigned by the respondent regarding filing of documents at this stage of proceedings therefore, no ground is made out for allowing the application, hence, the application is dismissed.’

4. The grievance of the petitioner/tenant is that if the documents are not taken on record, and the respondent/landlord on being confronted with these documents during his cross examination, denies the same then the petitioner/tenant would be remedy less.

5. The apprehension expressed by the petitioner/tenant while impugning the order dated 29th June, 2015 is contrary to the legal position in this regard.

6. In an eviction petition seeking eviction of the tenant on the ground of bonafide requirement, the tenant has a right to contest the eviction petition taking a plea that the landlord has alternative accommodations. The petitioner in this case was granted leave to defend by order of this Court dated 10th October, 2012 in RC.Rev. No.277/2011.

7. The petitioner filed the written statement detailing the properties which to his knowledge, were owned by the respondent/landlord. Rejoinder was filed by the respondent/landlord in respect of the properties detailed in tabulated form in para No.10 of the written statement, not disputing the ownership of properties mentioned in para 10 of the written statement.

8. The petitioner’s case is that even after filing of written statement, he could manage to have details of many other properties also owned by the respondent/landlord. Thus, the documents he wanted to place on record was to show that the eviction petition was filed concealing the vital

information about the properties owned by him which was very much in the knowledge of the respondent/landlord.

9. Learned counsel for the petitioner/tenant has submitted that in view of the concealment of information about the properties owned by the respondent/landlord in his eviction petition as well as while filing rejoinder, the possibility is that he may deny the certified copies of the title documents. Respondent may raise objections if the petitioner intends to prove such documents at the stage of defence evidence. Learned counsel for the respondent/landlord has submitted that though the documents now sought to be placed on record by the petitioner/tenant were not filed at the appropriate stage and the certified copies were obtained by him in January, 2015, the same were not filed immediately thereafter. He does not dispute the legal position that such documents can be confronted to a witness irrespective of the fact that such documents were not filed at the appropriate stage.

10. The question as to whether the documents not filed earlier if confronted to the witness during his cross examination and denied by him, can be proved at the stage of his own evidence, came up for consideration before this Court in the decision reported as Subhash Chander vs. Shri Bhagwan Yadav 2010 VI AD Delhi 96 wherein following questions were framed and answered as under:-

“1. This petition raises questions of general importance, arising frequently in trials. The questions can be framed thus:-

(i) What is the challenge/fate of the documents produced for the first time during the cross examination of a witness and which are denied by the witness? Whether the said documents are required to be retained / kept on the court file or merely because the witness has denied the document, the same has to be returned to the party which has produced the same?

(ii) If the said documents are to be kept on record/retained, what is the status thereof?

(iii) Whether a party producing the said document can prove

the same at the stage of his own evidence or for the reason of having not produced it along with its plaint / written statement and having chosen to use it only during cross examination, is then barred from treating the document as own document and proving the same? Since I am unable to find any judgment completely considering the aspects and further since in my opinion these questions plague the courts on a daily basis, it is deemed appropriate to answer the same.

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8. Order 7 Rule 14(4), Order 8 Rule 1 (A) (4), as well as Order 13 Rule 1(3) provide that the provisions requiring parties to file documents along with their pleadings and/or before the settlement of issues do not apply to documents produced for the cross examination of the witnesses of the other party. To the same effect, Section 145 of the Evidence Act also permits documents to be put to the witnesses, though it does not provide whether such documents should be already on the court record or can be produced / shown for the first time. However, in view of the unambiguous provisions of the CPC, it cannot be held that the document cannot be produced/shown for the first time during cross examination. If the witness to whom the said document is put, identifies his handwriting / signature or any writing / signatures of any other person on the said document or otherwise admits the said documents, the same poses no problem, because then the document stands admitted into evidence. However, the question arises as to what is the course to be followed if the witness denies the said document. Is the document to be kept on the court file or to be returned to the party producing the same?

9. This question also in my view is also not difficult to answer. It cannot possibly be said that the document should be returned to the party. If the document is so returned it will not be possible for the court to at a subsequent stage consider as to what was the document put and what was denied by the witness. In a given case, it is possible that the answer of the witness on being confronted with the document may not be unambiguous. It may still be open to the court to consider whether on the basis of the said answer of the witness, the

document stands admitted or proved or not and/or what is the effect to be given to the said answer. Thus, the document cannot be returned and has to be necessarily placed on the court file.

10. The next question which arises is that if the document is so placed on the court file, whether it becomes / is to be treated as the document of the party producing the same and is that party entitled to prove the said document notwithstanding having not filed the same earlier, as required by law, or the use of the said document is to be confined only to confront the witness to whom it was put and it cannot be permitted to be proved by that party in its own evidence.

11. The legislative intent behind order 7 Rule 14(4) and Order 8 Rule 1A (4) and Order 13 Rule 1(3) appears to be to permit an element of surprise, which is very important in the cross examination of witnesses. A litigant may well be of the opinion that if the document on the basis whereof he seeks to demolish the case of the adversary is filed on the court record along with pleadings or before framing of issues, with resultant knowledge to the adversary, the adversary may come prepared with his replies thereto. On the contrary, if permitted to show/produce the document owing to element of surprise, the adversary or witness, may blurt out the truth. Once it is held that a litigant is entitled to such right, in my view it would be too harsh to make the same subject to the condition that the litigant would thereafter be deprived of the right to prove the said documents himself. Thus, if the witness to whom the document is put in cross examination fails to admit the document, the party so putting the document, in its own evidence would be entitled to prove the same. However, the same should not be understood as laying down that such party for the said reason and to prove the said document would be entitled to lead evidence which otherwise it is not entitled to as per scheme of CPC and evidence law. For instance, if the document is shown by the defendant to the plaintiff's witness and the plaintiff's witness denies the same, the defendant can prove the document in his own evidence. Conversely, if the plaintiff puts the document to the defendant's witness and the defendant's witness denies the same, the plaintiff is entitled to lead rebuttal evidence would in

his rebuttal evidence be entitled to prove the same. However, if the plaintiff has no right of rebuttal evidence in a particular case, the plaintiff would not be entitled to another chance to prove the document. In such a case, the plaintiff has to make a choice of either relying upon the surprise element in showing the document or to file the document along with its pleadings and/or before the settlement of issues and to prove the same. Similarly, if the defendant chooses to confront the document to the plaintiff's witness in rebuttal, merely because the witness denies the document would not entitle the defendant to a chance to prove the document subsequently.

12. I may however put a line of caution over here. It is often found that a party which has otherwise failed to file documents at the appropriate stage, attempts to smuggle in the documents in the evidence of the witness of the adversary by putting the documents to the witness whether relevant to that witness or not. The court should be cautious in this regard. Only those documents with which the witness is concerned and/or expected to know or answer ought to be permitted to be put to the witness in the cross examination. If other documents with which the witness is not concerned are confronted only in an attempt to have the same filed and to thereafter prove the same, the court would be justified in clarifying that the document is taken on record only for the purpose of cross examination and the producing party would not be entitled to otherwise prove the same, having not filed it at the appropriate stage.”

11. The case of the petitioner has been examined in the light of above legal position. The petitioner/tenant has a right to cross examine the respondent/landlord and being not precluded from confronting the witness in cross examination with the documents which are not on record, the impugned order hardly causes any prejudice to the petitioner. What will be the effect of denial of such documents by the witness which have been confronted with during the cross examination, stands answered in Subhash Chander's case (supra).

12. In view of the above discussion and finding no illegality or infirmity

in the impugned order, the petition is dismissed.

13. No costs.

CM No.12275/2015

Dismissed.

PRATIBHA RANI, J.

JULY 29, 2015

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