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

% Judgment delivered on: 16.09.2015

+ FAO (OS) 524/2015

RAUNAQ AUTOMOTIVE COMPONENTS LTD. Appellant

versus

J P S KANWAR

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Amit Singh Chaddha, Sr Advocate with Mr Lalan Sinha and Mr Vineet Sinha, Advocates.

For the Respondent : None.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM No.19625/2015 (exemption)

Exemption is allowed subject to all just exceptions.

FAO (OS) 524/2015

1. This appeal is directed against the order dated 10.07.2015 passed by a learned Single Judge of this Court in OA No.258/2015 which, in

turn, was directed against the order passed by the Joint Registrar on 22.05.2015. The Joint Registrar had rejected the application of the appellant/plaintiff for leading additional evidence of a witness whose name was not there in the original list of witnesses. The Joint Registrar dismissed the said application by the order dated 22.05.2015 after observing that the application had been filed after five years of the closure of the evidence in order to fill up a lacuna which was not permissible. The Joint Registrar specifically noted that the appellant/plaintiff was well aware of its case and, particularly, the documents which were required to be proved. Consequently, it was held that the appellant/plaintiff could not be permitted to reopen the evidence by placing blame on the counsel.

2. Being aggrieved by the order dated 22.05.2015 passed by the Joint Registrar, the appellant/plaintiff preferred a chamber appeal being OA 258/2015 which has also been dismissed by the learned Single Judge by virtue of the impugned order dated 10.07.2015. The learned Single Judge, agreeing by the conclusion arrived at by the Joint Registrar, held that the plaintiff could not be permitted to reopen evidence simply by stating that the earlier counsel had made a slip. It was also observed that, earlier

under Order XVIII Rule 17A of the Code of Civil Procedure, 1908, additional evidence could be permitted by the Court but the said provisions had since been deleted. Consequently, the learned Single Judge took the view that the appellant/plaintiff had not been able to make out a case for leading additional evidence and that, too, to fill up a lacuna after five years.

3. The learned senior counsel appearing on behalf of the appellant submitted that the only reason why the learned Single Judge passed the impugned order was that the provisions of Order XVIII Rule 17A CPC had been deleted w.e.f. 01.07.2002. The learned senior counsel submitted that the deletion of Order XVIII Rule 17A CPC did not mean that the Court did not have power to allow additional evidence. He submitted that the Court could very well invoke its inherent jurisdiction under Section 151 CPC for permitting production of such evidence. In support of this contention, the learned senior counsel placed before us the decision of the Supreme Court in **K.K. Velusamy v. N. Palanisamy**: (2011) 11 SCC 275. In the said decision the Supreme Court observed as under:-

“11. There is no specific provision in the Code enabling the parties to re-open the evidence for the purpose of further examination-in-chief or cross-

examination. Section 151 of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent powers of the Code to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court. In the absence of any provision providing for re-opening of evidence or recall of any witness for further examination or cross-examination, for purposes other than securing clarification required by the court, the inherent power under section 151 of the Code, subject to its limitations, can be invoked in appropriate cases to re-open the evidence and/or recall witnesses for further examination. This inherent power of the court is not affected by the express power conferred upon the court under Order 18 Rule 17 of the Code to recall any witness to enable the court to put such question to elicit any clarifications.

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13. The Code earlier had a specific provision in Order 18 Rule 17A for production of evidence not previously known or the evidence which could not be produced despite due diligence. It enabled the court to permit a party to produce any evidence even at a late stage, after the conclusion of his evidence if he satisfied the court that even after the exercise of due diligence, the evidence was not within his knowledge and could not be produced by him when he was leading the evidence. That provision was deleted with effect from 1.7.2002. The deletion of the said provision does not mean that no evidence can be received at all, after a party closes his evidence. It only means that the amended structure of the Code found no need for such a provision, as the amended Code contemplated little or no time gap between completion of evidence and commencement and conclusion of arguments.

Another reason for its deletion was the misuse thereof by the parties to prolong the proceedings under the pretext of discovery of new evidence.

14. The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for re-opening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.

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19. We may add a word of caution. The power under section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or

permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application.”

4. On going through the above observations of the Supreme Court, we find that the submission made by the learned senior counsel for the appellant that even though Order XVIII Rule 17A CPC is no longer in the Statute Book, the Court is not powerless to permit the production of the additional evidence is correct. However, that is subject to certain conditions being fulfilled. The Supreme Court made it clear that one of the reasons for deletion of Order XVIII Rule 17A of the CPC was that no

time interval was now contemplated between the closure of evidence and the commencement of arguments and, therefore, there was no question of any event taking place between the closure of evidence and the commencement of arguments. However, as in the present case and also indicated in the observations of the Supreme Court, there could be situations where there is a wide time gap between the closure of evidence and the commencement of arguments and if something happens in that interval, subject to the other conditions being satisfied, additional evidence in respect thereof could be led. The conditions stipulated by the Supreme Court in the aforesaid decision were that if there was a time gap between the completion of evidence and hearing of arguments for whatever reasons, and if in that interval of time, a party came across some evidence which “he could not lay his hands on earlier”, or some evidence in regard to the conduct or action of the other party “comes into existence”, the Court could exercise its inherent power under Section 151 of the Code and permit the production of such evidence provided it was relevant and necessary in the interest of justice and subject to such terms as the Court may deem fit to impose. It was reiterated by the Supreme Court that if an application to lead additional evidence was filed, inter

alia, to cover up negligence or lacunae, it ought to be rejected “with heavy costs”.

5. The facts of the present case indicate that the evidence which the appellant/plaintiff seeks to lead at this stage is not some evidence which it was not aware of or could not lay his hands on earlier. It is also not any evidence with regard to the conduct of the other party which came into existence after the closure of evidence. Thus, none of the conditions specified by the Supreme Court stand satisfied for invoking the Court’s inherent power under Section 151 of the CPC.

6. Consequently, the appeal is dismissed.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

SEPTEMBER 16, 2015
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