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

% *Date of Decision : 6th November, 2015*

+ **CM(M) 800/2015**

MUKESH GULATI Petitioner

Through: Mr.Ankur Mahindru & Mr.Harish
Malik, Advocates

versus

SURAJ PRAKASH CHAUHAN & ORS Respondents

Through: Mr.Rajan Chaudhary, Advocate.

PRATIBHA RANI, J. (Oral)

CM(M) 800/2015

1. The limited question raised before this Court by the petitioner is whether the Court can decline to take on record the documents which were not available at the stage of filing of documents or leading the evidence and deny that party an opportunity to prove its case by leading evidence to prove such documents which have material bearing to the controversy involved.

2. Mr.Ankur Mahindru, Advocate appearing on behalf of the petitioner vehemently urged that the information received under RTI Act from the Public Authorities was only after the evidence has been led by both the parties. He has submitted that merely because the case is at the stage of final arguments is not sufficient to decline a party the opportunity to produce documents and lead evidence as at the appropriate stage the same were not in possession of that party.

3. Learned counsel for the petitioner has relied upon the judgment of K.K. Velusamy vs. N. Palanisamy (2011) 11 SCC 275 wherein the Apex Court ruled that the Court have the inherent right for the re-opening or

recalling of the witness for the ends of justice.

4. Vide impugned order dated 20th July, 2015, the learned Civil Judge dismissed the application under Order VIII Rule 1 A(3) CPC whereby the petitioner wanted to place on record letter dated 1st August, 2013 vide which he came to know that vide award no.1606 regarding Khasra No.106/2, possession of land in question was given to DDA on 7th August, 1963. The application under Order XVIII Rule 17 CPC was filed to examine an official from Slum and JJ Department to prove the factum of accusation of 4 bigha 16 biswa land forming part of Khasra No.106/2 and possession thereof being handed over to DDA vide notification dated 20th March, 1974.

5. Learned Trial Court declined the prayer made in the two applications for the following reasons:-

(i) The case is at the stage of final arguments which started way back on 16th February, 2015 i.e. prior to the letter dated 19th June, 2015 vide which the petitioner allegedly came to have acquired the knowledge of possession of the land being taken by DDA.

(ii) The petitioner/defendant had sufficient opportunity to prove the above facts.

(iii) Reliance placed on K.K. Velusamy vs. N. Palanisamy (Supra) by learned counsel for the petitioner is not applicable to this case especially when in the said judgment a caution has also been given that the power under Section 151 CPC or under Order XVIII Rule 17 CPC is not to be used in a routine manner.

6. Learned counsel for the petitioner though referred to para Nos. 14 and 15 of the judgment in support of his contention, these paragraphs have to be read in the light of observation made by Hon'ble Supreme Court in para no. 16 of the said judgment. Para Nos.14, 15 and 16 read as under:-

“14. Neither the trial court nor the High court considered the question whether it was a fit case for exercise of discretion under section 151 or Order 18 Rule 17 of the Code. They have not considered whether the evidence sought to be produced would either assist in clarifying the evidence led on the issues or lead to a just and effective adjudication. Both the courts have mechanically dismissed the application only on the ground that the matter was already at the stage of final arguments and the application would have the effect of delaying the proceedings.

15. The appellant – defendant has taken a consistent stand in his reply notice, written statement and evidence that the agreement of sale was executed to secure a loan of Rs.150,000, as the respondent insisted upon 13 execution and registration of such agreement. If after the completion of recording of evidence, PW1 and PW2 had admitted during conversations that the amount paid was not advance towards sale price, but only a loan and the agreement of sale was obtained to secure the loan, that would be material evidence which came into existence subsequent to the recording of the depositions, having a bearing on the decision and will also clarify the evidence already led on the issues. According to the appellant, the said evidence came into existence only on 27.10.2008 and 31.10.2008, and he prepared the applications and filed them at the earliest, that is on 11.11.2008. As defendant could not have produced this material earlier and if the said evidence, if found valid and admissible, would assist the court to consider the evidence in the correct perspective or to render justice, it was a fit case for exercising the discretion under section 151 of the Code. The courts below have not applied their minds to the question whether such evidence will be relevant and whether the ends of justice require permission to let in such evidence. Therefore the order calls for interference.

16. 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 15 recording before granting or rejecting the application.”

7. In Vadiraj Naggapa Verrneka (D) Through Lrs. Vs.Sharad Chand Prabhakar Gogate, Civil Appeal No.1172/2009 decided on 24th February, 2009 the Supreme Court has observed as under:-

“16. In our view, though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said rule is to enable the Court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined. As indicated by the learned Single Judge, the evidence now being sought to be introduced by recalling the witness in question, was available at the time when the affidavit of evidence of the witness was prepared and

affirmed. It is not as if certain new facts have been discovered subsequently which were not within the knowledge of the applicant when the affidavit evidence was prepared. In the instant case, Sadanand Shet was shown to have been actively involved in the acquisition of the flat in question and, therefore, had knowledge of all the transactions involving such acquisition. It is obvious that only after cross-examination of the witness that certain lapses in his evidence came to be noticed which impelled the appellant to file the application under Order 18 Rule 17 CPC. Such a course of action which arises out of the fact situation in this case, does not make out a case for recall of a witness after his examination has been completed. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.”

8. No doubt that additional evidence can be led depending upon facts of the case even at the stage of final arguments, however, once again the law laid down in this judgment is not that in all cases and in all the facts evidence be allowed at the stage of final arguments. A party cannot be allowed to fill up the lacuna by leading additional evidence including by failing to cross examine the witness of the other side, when the case is at the stage of final arguments without giving any plausible reasons.

9. It is settled legal position that in a civil suit evidence cannot be led beyond pleadings. The amended written statement by the petitioner/defendant in this case has been filed in October, 2007 copy of which is annexed with this petition as Annexure ‘C’. In para 30 of the amended written statement a plea has been taken about 4 bigha 16 biswa land being acquired by the Government vide Award No.1606 dated 24th August, 1965. The information obtained by the petitioner vide letter dated 19th June, 2015 which he wants to place on record is to the effect that Khasra

No.106 is in two parts. Khasra No.106/1 measuring 1 bigha and 10 biswa does not belong to DDA. Khasra No.106/2 measuring 4 bigha and 16 biswa has been acquired vide Award No.1606 and possession has been handed over to DDA on 7th August, 1963.

10. In view of the averments made in para No.30 of the amended written statement, it is not open to the petitioner now to claim that prior to acquiring the knowledge vide letter dated 19th June, 2015 under RTI Act, this evidence was not within his knowledge so as to entitle him to get an opportunity to lead the evidence at the stage of final arguments. It may be noted here that under Right to Information Act if the petitioner prefers to take an information at a later stage in respect of a fact pertaining to year 1963 i.e. much before the filing of the suit, the said fact being specifically pleaded in the written statement, he has rightly been declined permission to place on record such material in the garb that the said information was not earlier in his power and possession and obtained under RTI Act.

11. In the instant case, the parties have already closed their evidence and the Court has even heard the final arguments in part. At this stage petitioner wants to fill up the lacuna left in his defence. From the stage of filing the written statement the petitioner/defendant knew about the evidence he has required to lead to prove his defence. It is also necessary to mention here that the suit pertains to property No.2151/12, New Patel Nagar, New Delhi-110008 and there is no pleading that the said property falls in Khasra No.106/2.

12. Finding no illegality or infirmity in the impugned order, the petition is dismissed.

13. No costs.

CM No.17407/2015

Dismissed as infructuous.

NOVEMBER 06, 2015

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PRATIBHA RANI, J.