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

+ **CM(M) 127/2016**

NIRLON LIMITED

..... Petitioner

Through Mr.Ashu Mahajan, Advocate.

versus

UNION BANK OF INDIA & ORS

..... Respondents

Through Nemo.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

O R D E R

% **08.02.2016**

C.M. No.4559/2016 (exemption)

Exemption is allowed subject to just exceptions. Application disposed of.

CM(M) 127/2016 & C.M.No.4558/2016

Petitioner is aggrieved by the order dated 15.12.2015 vide which his application filed under Order VII Rule 14 CPC read with Order XVIII Rule 17 and Sections 151 CPC seeking liberty to place on record an additional document which is an extract of the board resolution dated 30.9.2015 had been denied. The impugned order had dismissed the application largely on the premise that the application had been filed belatedly i.e. at the stage when the matter was almost ripe for final arguments. The averments made in the application pursuant to which the impugned order was passed have been perused. It has been averred that the board resolution dated 30.9.2015 passed in favour of P.N.Sharma who had been authorized by earlier board resolution to file the suit did not contain the word “institute” the suit and this was a defect which was noted by the plaintiff only at the

stage when the matter was ripe for final arguments. Such a defect could be cured at that stage. This application was dismissed without noting the proposition of the ratio laid down by the Apex Court in (1996) 6 SCC 660 United Bank of India Vs. Naresh Kumar and Ors.; it is a fallacy.

The Apex Court while dealing with a similar factual matrix had noted that such a power could be exercised by the Courts even at the appellate Stage under Order XLI Rule 27 of the CPC. The impugned order otherwise thus committed an illegality. It would be a travesty of justice, if the suit is dismissed only on this ground.

Accordingly, the board resolution dated 30.9.2015 is permitted to be taken on record and the plaintiff is granted permission to summon the Company Secretary to prove this document. The Trial Court shall give an opportunity for the said purpose. Needless to state that the defendant is permitted to cross-examine the witness on this aspect. Needless to state that this document will be dealt with on its merits.

This order is passed subject to costs of Rs.5000/- to be deposited with the Delhi High Court Legal Services Committee.

Petition disposed of.

Order dasti under signatures of the Court Master.

INDERMEET KAUR, J

FEBRUARY 08, 2016

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