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

+ **CS(OS) 1541/2009**

M/S G.R. GUPTA BROTHERS PVT LTD

..... Plaintiff

Through: **Mr. Sandeep Sharma and Ms. Risha Mittal, Advocates.**

versus

M/S TARAPORE & CO & ORS

..... Defendants

Through: **Mr. Jagdeep Kishore, Adv.
Ms. Priya Kumar, Mr. Adhish Srivastava and Ms. Tanya Tiwari,
Advs. for M/s Tarapore**

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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04.04.2016

O.A.No. 255/2015(against order dated 22.4.2015)

1. This O.A is filed by the plaintiff against the order of the Joint Registrar dated 22.4.2015 dismissing the application being I.A.4271/2014 filed by the plaintiff under Order 7 Rule 14 CPC. By the application plaintiff seeks to get placed on record two sets of documents. One set of documents is the courier receipts evidencing sending of letters by the plaintiff to the defendant from 5.9.2005 to 22.09.2007 and which letters were filed alongwith the plaint in terms of the list of documents dated

1.8.2009. The second set of documents which is sought to be filed on record is statements showing retention of security amounts by the defendants.

2. At this stage, counsel for the plaintiff states that he is not pressing for taking on record the statements with respect to the retention of security deposits filed alongwith the affidavit by way of evidence. The issue is therefore with respect to filing of courier receipts showing dispatch of the letters from the plaintiff to the defendants from 5.9.2005 to 22.9.2007.

3. Learned counsel for the plaintiff states that though in the affidavit by way of evidence these courier receipts are shown as exhibited, however, before these courier receipts are proved and exhibited, plaintiff will summon the courier company with the original records to show dispatch and receipts of the relevant letters through courier and only thereafter, courier receipts will be exhibited.

4. Though as per Order 13 Rule 1 CPC documents have to be filed on or before framing of issues, however, courts are reluctant to punish negligence of parties and their advocates by foreclosing the rights to lead documentary evidence inasmuch as CPC is a handmaid of justice. A reference to the letters filed with the list of document dated 1.8.2009 shows that these letters

are sent by courier, and therefore courier receipts which are sought to be filed alongwith the affidavit by way of evidence are allowed to be taken on record subject to the statement of counsel for the plaintiff that these documents will be proved and exhibited only after summoning the courier company. Of course, defendants will have complete right to cross-examine the witness of the plaintiff as also courier company before the documents can be taken on record as held as proved.

4. O.A is allowed and disposed of but subject to payment of costs of Rs.25,000/- by the plaintiff to the defendants inasmuch as it is seen that issues in this case were framed way back in 2011. Costs be paid within eight weeks from today.

5. At this stage, at the request of counsel for the defendants it is noted that documents except those allowed by the present order, and which were not filed before framing of issues, though may have been filed alongwith the affidavit by way of evidence, the same are not taken on record.

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5. An Office Order dated 24.11.2015 has been issued by Hon'ble the Chief Justice in exercise of powers conferred by Section 4 of the Delhi High Court (Amendment) Act, 2015, whereby ordinary suits which are not

commercial matters having pecuniary jurisdiction up to the value of rupees two crores cannot be tried by this Court and commercial matters up to the value of rupees one crore cannot be tried by this Court. Accordingly, this suit is transferred for decision to the jurisdictional Court under the District & Sessions Judge (South East), Saket Courts, New Delhi.

6. Let parties appear before the District & Sessions Judge (South East), Saket Courts, New Delhi on 12th May, 2016. Suit file be made available to the District & Sessions Judge (South East), Saket Courts, New Delhi on the date fixed.

VALMIKI J. MEHTA, J

APRIL 04, 2016

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