

\$~8

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CM(M) 511/2016

M/S JP KAPUR&OBERAI

..... Petitioner

Through Mr.Aaditya V.K., Advocate.

versus

M/S COL DS JAMWAL (HUF) & ORS

..... Respondents

Through Nemo.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

%

23.05.2016

C.M. No.19781/2016 (exemption)

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

CM(M) 511/2016 & C.M. No.19782/2016

Order impugned before this Court is the order dated 08.3.2016 vide which on an application filed by the plaintiff under Order XVI Rule 3(1) of the CPC along with an application under Section 5 of Limitation Act for summoning one witness had been allowed. The petitioner before this Court is the defendant in the Trial court. He is aggrieved by that finding. His submission is that evidence of PW-1 stood closed in the year 2013. The present application (on the basis of which impugned order had been passed) was filed in October, 2013 but somehow the impugned order came to be passed only on 08.3.2016. Trial Court had noted that there appears to be bona fide

reason for not filing the list of witnesses by the plaintiff vide which he wished to summon the witness (namely Estate Manager of property bearing No.94, Meghdoot Building, Nehru Place, New Delhi) with regard to the record of flat No.806 situated at 8th floor along with Buyers Agreement and Endorsements made therein had been permitted.

Relevant would it be to note that that the aforementioned property is the subject matter of the suit. The averments made in the plaint are also relevant. The averments in the plaint in para no.1 disclose that the plaintiff has purchased this property from the erstwhile owner D.B.Vikram Singh, predecessor-in-interest of Col.D.S.Jamwal (HUF). The contents of the application under order XVI Rule 3(1) of the CPC were to the effect that the relevant record of the Meghdoot building qua the suit property had to be summoned to establish this submission i.e. the submission of the plaintiff that he had purchased this property from the erstwhile owner D.B.Vikram Singh, which at the cost of repetition finds mention in para 1 of the plaint. The body of the application discloses that there was a bonafide belief of the plaintiff and his counsel that the list of witnesses already stood filed. Inadvertently list of witnesses was not on record. This default was neither intentional nor deliberate. This submission of the petitioner noted in the application (in para 5) is borne out from the fact that immediately after closure of examination of PW-1, the aforementioned application came to be filed.

The Trial Court had exercised its discretion wisely. Learned counsel for the petitioner has placed reliance upon a judgment of this

Court reported as ILR (2008) Supp. (12) Delhi 113 Dinesh Jain Vs. Krishan Kumar Gupta. Submission being that filing of list of witnesses is not a frivolous exercise; only in case there is a bona fide mistake, the Court should allow the filing of such a list. The Trial Court had returned a fact finding that there was a bona fide and genuine mistake on the part of the plaintiff in not filing the list of witnesses and accordingly, the prayer made in the aforementioned application had been allowed.

The impugned order had exercised its discretion wisely and judicially; the order calls for no interference.

Petition is dismissed with cost of Rs.10,000/-.

INDERMEET KAUR, J

MAY 23, 2016

ndn