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

+ CM(M) 686/2016

CHAMELI DEVI & ORS

..... Petitioners

Through

Mr.Ravinder S. Gara, Advocate.

versus

LUCKY CHOUDHARY

..... Respondent

Through

None.

+ CM(M) 687/2016

CHAMELI DEVI

..... Petitioner

Through

Mr.Ravinder S. Gara, Advocate.

versus

LUCKY CHOUDHARY

..... Respondent

Through

None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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20.07.2016

CM No. 25487-88/2016 (exemption) in CM(M) 686/2016

CM No. 25491-92/2016 (exemption) in CM(M) 687/2016

Exemption is allowed subject to all just exceptions.

CM(M) 686/2016 and 25486/2016 (stay)

CM(M) 687/2016 and 25490/2016 (stay)

Learned counsel appearing for the petitioners seeks to impugn the order dated 14.05.2016 by which an application moved by the petitioner

CM(M) 686/2016 & 687/2016

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under Section 151 CPC for adducing additional documents was dismissed.

The petitioner wanted to place on record certified copy of deposition of witnesses which were adduced in the civil suit titled as ***Mrs. Chameli Devi vs. Rattan Singh***. It was urged that the deposition of the witnesses which was adduced in the said suit be taken on the present judicial file and read as evidence for deciding the present application. The trial court noted that evidence in other suit which is between some other parties cannot be read as evidence in any other suit. The application was dismissed with costs of Rs.2,000/- as it was said to be moved to linger on the present suit.

Learned counsel appearing for the petitioner has relied upon the proviso to Section 33 of the Indian Evidence Act to contend that if the previous proceedings whose documents are sought to be filed was between the same parties or between their representatives in interest, Section 33 would be applicable. He submits that in the earlier suit filed by the petitioner, the father of the respondent was the defendant whereas here the son has moved the present petition. He relies upon judgment of the privy council in the case of ***Krishnayya Surya Rao Bahadur Garu & Anr. vs. Venkata Kumara Mahipathi Surya Rao Bahadur Garu, Rajah of Pittapur, AIR 1933 Privy Council 2012*** to contend that Section 33 of the Evidence Act would apply to the facts of the case.

A perusal of the impugned order shows that these submissions have not been made before the trial court when it dismissed the application of the petitioner vide impugned order dated 14.05.2016. It is appropriate that the

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petitioner approaches the trial court with an appropriate review application bringing out these submissions. Giving liberty to the petitioner to move an appropriate review application before the trial court to urge these contentions, the present petitions stand disposed of. The petitioner is also at liberty to seek waiver of the costs before the trial court.

In case the petitioner moves any such review application within two weeks from today, the trial court is requested to consider the same as per law.

The petitions stand disposed of.



JAYANT NATH, J

JULY 20, 2016

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