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

+ CM(M) 700/2016 & CM Nos.25918/2016 & 25919/2016

M K FURNCRAFT (P) LTD Petitioner

Through Mr.Sanjay Gupta,Adv.

versus

SHASHI BALA GUPTA & ANR Respondent

Through Mr.Virender Mehta, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **22.07.2016**

CM No.25919/2016 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 700/2016 & CM Nos.25918/2016

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 10.3.2016 and 19.5.2016 passed by the trial court permitting the respondent/plaintiff to lead rebuttal evidence.

2. The respondents have filed the present suit for recovery of Rs.11,28,500/-.

3. By the impugned order dated 10.3.2016 the trial court noted that the petitioner/defendant has denied his signatures and accordingly the respondent may be allowed to lead evidence in rebuttal.

4. The affidavit by way of evidence in rebuttal of Shri Ravinder Kumar Gupta was filed. On 19.5.2016 the court heard arguments again on the point of evidence in rebuttal by the respondents. The trial court noted the submissions of the respondents that the AR of the petitioner had in his cross-examination stated that a sum of Rs.3,12,074/- was paid by the petitioner company to the respondents towards settlement of full dues. It was urged that this was verbally settled with Shri Ravi Gupta. It also noted the submission of the respondent that this stand of the petitioner has been stated for the first time in evidence and hence need for leading rebuttal evidence. The court noted the submissions of the respondent that the written statement was confined only to the fact that Rs.3,12,074/- was paid. However, it is nowhere stated that the sum was paid to the respondents towards settlement of all their dues and that the same was verbally settled with Sh. Ravi Gupta as this averment has come for the first time from the petitioner/defendant as deposed by DW-1. Hence, the court allowed the respondent to lead rebuttal evidence.

5. I have heard learned counsel for the parties.

6. Rebuttal evidence is explained in the order 18 Rule 3 CPC which reads as follows:-

“3 Evidence where several issues.- Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to

the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.”

7. In the present case the court has framed the following issues:-

“1. Whether plaintiff is entitled for the decree of recovery of Rs.11,28,500/- with interest as prayed for? OPP”

8. Hence, there is no issue onus on which has been placed on the petitioner. The respondents were obliged to lead their complete evidence in its turn as per provisions of order 18 Rule 3 CPC. It is normally on issues onus of which was on the petitioner that the respondents could have led evidence after the evidence of the petitioner was complete.

9. In any case, in my opinion, the issue may not be very material in the facts of the present case and can also be treated as a case where the court has allowed the respondents to lead additional evidence in view of the fact that new facts have been placed on record by the petitioner which have not been pleaded. Thus, a course of action would certainly be open to the trial court.

10. There are no reasons to interfere with the impugned order. Petition is dismissed. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J.

JULY 22, 2016

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Signed on 01.03.2017