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

+ CM(M) 740/2016 & CM No.27833/2016

ATUL AGGARWAL

..... Petitioner

Through

Mr.Umesh Suri and Mr.K.P.Singh,
Advs.

versus

M/S SOL LOGESTICS INC & ORS

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **10.08.2016**

1. By the present petition the petitioner seeks to impugn the order dated 9.2.2016 passed by the trial court permitting the application of the respondent under section 65 of the Indian Evidence Act for giving secondary evidence on behalf of defendants No.1 and 2.

2. The petitioners have filed the present suit for recovery of Rs.2,07,595/-. It is the contention of the petitioner that on purely personal basis the petitioner had given a loan to respondent and seeks return of the said loan amount. Earlier also, respondent had filed an application under Order 11 Rule 12 and 14 read with section 151 CPC seeking direction to the petitioner to produce certain documents with record pertaining to M/s.A & A Associates Merchandising Co.Pvt.Ltd. of which petitioner is one of the Directors. The trial court had dismissed the said application on 20.3.2006 holding as follows:-

“I am of the considered view that dealings/transactions occurred between defendant and M/s.A & A Associates Merchandising P.Ltd. are irrelevant as far as case of plaintiff is concerned and the defendant cannot claim

inspection of the documents mentioned in the application in the given circumstances. Accordingly, application is dismissed being devoid of merit.”

3. Learned counsel appearing for the petitioner submits that the respondents are needlessly trying to mix up the issue of the petitioner and M/s. A & A Associates Merchandising Co.Pvt.Ltd. inasmuch as the present suit is filed by the petitioner in his individual capacity and M/s.A & A Associates Merchandising Co.Pvt.Ltd. has nothing to do with the claim of the petitioner. He submits that the trial court has now by the impugned order allowed the respondents to do what the trial court had earlier by order dated 20.3.2006 disallowed the respondent.

4. Advance copy of this petition has been served on the respondent and their counsel by Speed Post. However, none has appeared for the respondent.

5. A perusal of the application filed by the respondent under Section 65 of the Evidence Act show that reliance is placed to the same transactions which were subject matter of the order dated 20.3.2006. Permission is sought under section 65 of the Indian Evidence Act for giving secondary evidence.

6. A perusal of the impugned order shows that the trial court has noted the contention of the petitioner about the earlier order dated 20.3.2006 but has not dealt with the said submissions.

7. As far as section 65 of the Evidence Act is concerned the relevant portion of the section reads as follows:-

65. Cases in which secondary evidence relating to documents may be given –

Secondary evidence may be given of the existence, condition or contents of a document in the following cases:

(a) When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in Section 66, such person does not produce it;

8. It is the contention of the petitioner that the original documents which are claimed to be in possession of the petitioner are not in the power or possession of the petitioner inasmuch as they pertain to the company M/s.A & A Associates Merchandising Co.Pvt.Ltd. He submits that it cannot be concluded that the petitioner and the said company are the same person. He submits that the impugned order has not dealt with this contention of the petitioner.

9. Accordingly, petitioner is granted liberty to move an application for review before the trial court to submit the said contentions. Granting leave and liberty to the petitioner to move the said application for review, the present petition is disposed of.

10. In case such a petition is filed within two weeks from today the trial court is requested to consider the same, as per law.

11. Petition stands disposed of.

JAYANT NATH, J

AUGUST 10, 2016/

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