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

+ CM(M) 803/2016

M/S F C M L PROJECTS ..... Petitioner  
Through Ms.Neha Kapoor, Advocate

versus

MALIKA RAGHUVANSHI ..... Respondent  
Through Mr.Satyender Chahar, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**ORDER**

% **22.08.2016**

1. By the present petition, the petitioner seeks to impugn the orders dated 22.07.2016 and 30.07.2016 passed by the learned trial court.
2. At the outset, the learned counsel for the petitioner submits that one page of the petition, namely prayer clause inadvertently has not been filed with the petition. She seeks to place on record page No.17A on record. Page No.17A, which is a prayer clause, is taken on record.
3. Vide order dated 22.07.2016 the petitioner's application under Order XVII Rule 3 CPC seeking liberty to lead evidence in rebuttal was dismissed. The trial court noted that the application has been filed at the stage of hearing of final argument. The petitioner had sought adjournment on the last date of hearing assuring that he will not take any date and he would advance his submission on 21.07.2016. The court also noted that the suit was filed on 03.02.2011. The written statement was filed on 02.07.2012 and issues were framed vide order dated 14.09.2012. Steps were taken by the petitioner to

summon the witness the alleged owners of the premises where the goods were delivered but despite several opportunities, the address of the witness could not be traced. The trial court also noted that no new facts have been revealed in the cross-examination of the defendant except the name of the owners of the property where furniture was delivered i.e. Mr.Rishi Miglani. The other owner namely Mr.Kotru summon had already been sent but received unserved. As the petitioner failed to show bona fide at the stage of leading his evidence and the petitioner seeks to again summon the same persons, the application was dismissed.

4. The second application was filed under Order I Rule 10 CPC to implead Mr.Kotru and Mr.Rajesh Miglani, owners of the property where it is stated that the petitioner had supplied goods. It was the contention of the petitioner that he supplied goods to the respondent and sought recovery of the unpaid amount. The defence of the respondent was that she is only an interior designer and the goods were supplied to the owners of the property. The name of the second owner was revealed only in the course of cross-examination of the respondent. The trial court noted that earlier also attempt was made to serve the proposed parties as witness but the petitioner did not take steps. The court also noted that at this stage the relief claimed against Mr.Kotru and Mr.Rajesh Miglani by the present impleadment application would be barred by law and limitation. There being no due diligence on the part of the petitioner, the application was dismissed with cost.

5. The learned counsel for the petitioner today has confined her relief to permission to lead rebuttal evidence. She submits that onus of proving the issue namely that the suit is bad for misjoinder of parties lies upon the defendant and after evidence of the parties is closed, the petitioner/plaintiff

would be entitled to lead rebuttal evidence.

6. Order XVIII Rule 3 CPC reads as follows:

**“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. The relevant issue framed reads as follows”

“a. Whether the suit is bad for misjoinder of parties? OPD”

8. The onus of proving the above issue was on the respondent/defendant. After the evidence of the defendant, it would have been for the petitioner to have requested for leading rebuttal evidence. It is admitted by the petitioner that at the stage when the respondent closed his evidence such liberty was not sought. It is however urged that liberty has been sought within two hearings and the petitioner should not be prejudiced by the said lapse and the delay in making the said request is not unreasonable.

9. The petitioner would normally have liberty to lead rebuttal evidence on the above issue. No doubt, there is some delay in requesting the court to permit him to lead such evidence but it cannot be said that there is gross delay. The respondent can be compensated by way of costs. It would be in the interest of justice that the petitioner be permitted to lead rebuttal evidence. The present petition to above extent is allowed and the application

of the petitioner to lead rebuttal evidence is allowed subject to payment of cost of Rs.7,500/-. The petitioner will ensure the service of summons on the witnesses by the date the trial court fix the date for evidence.

10. The trial court is requested to conclude the rebuttal evidence within three months from the date when the trial court permits summoning of the witnesses in rebuttal.

11. The present petition stands disposed of.

12. Dasti.

**JAYANT NATH, J.**

**AUGUST 22, 2016/v**