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

+ CM(M) 874/2016

OM PRAKASH

..... Petitioner

Through: Mr. Aditya Vijay Kumar, Advocate.

versus

DHARAMPAL

..... Respondent

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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06.09.2016

C.M. No.32536/2016 (for exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

CM (M) No.874/2016 & C.M. No.32535/2016 (for stay)

1. By the present petition, the petitioner seeks to impugn the order dated 16.5.2016 by virtue of which the trial court allowed the application filed by the respondent/plaintiff under Order XVIII Rule 17 CPC for recall of PW-2, Ram Chander.

2. The respondent/plaintiff has filed a suit for recovery of Rs.1,50,000/- stating that at the time of taking of the loan, the petitioner/defendant had issued a receipt to the respondent/plaintiff which was duly signed by him. The receipt dated 10.1.2011 is annexed to the plaint.

3. PW-2, Ram Chander, is said to be the witness of the receipt. In his affidavit by way of evidence, he states that a sum of Rs.1,50,000/- was given to the petitioner in his presence and he is the eye-witness. He did not exhibit the receipt dated 10.1.2011. He was cross-examined by the counsel for the petitioner on 2.11.2012. During the course of his cross-examination, he had admitted that he has signed on a receipt which was written at that time when the loan was advanced to the petitioner.

4. The evidence of the parties has been completed and the matter was at the stage of final arguments. It is at this stage that the respondent has moved the present application seeking re-examination of PW-2.

5. Vide the impugned order, the trial court noted the objection of the petitioner and his reliance on the judgment of the Supreme Court in *Vadiraj Naggappa Vernekar (Dead) vs. Sharadchandra Prabhakar Gogate*; (2009) 4 SCC 410 and the judgment of the Bombay High Court in *balkrishna Shivappa Shetty vs. Mahesh Nenshi Bhakta & Others*; AIR 2003 Bombay 293 to conclude that as per the judgment of the Supreme Court, if evidence of re-examination of the witness has a bearing on the ultimate decision of the suit, it is then the discretion of the trial court to permit recall of such witness for re-examination-in-chief with permission to cross-examine the witness thereafter. The trial court noted that the substance of the application of the respondent was the receipt which could not inadvertently come in the evidence of PW-2 who as per the respondent, is the witness to

the execution of the receipt. The receipt was filed along with the plaint and is not a fresh evidence. Hence, the trial court exercised its discretion and permitted re-examination of PW-2 subject to payment of cost of Rs.1,000/-.

6. The learned counsel for the petitioner has reiterated the contentions which were made before the trial court relying upon the judgment of the Supreme Court in *Vadiraj Naggappa's case (supra)* and in the case of *Balkrishna Shivappa Shetty's case (supra)*. He submits that essentially what the respondent is seeking to do is to fill up the lacuna in the evidence which the Supreme Court in the said judgment has held, was not permissible.

7. In my opinion, there are no merits in the contentions of the petitioner. In para 30 of the judgment in *Vadiraj Naggappa's case (supra)*, the Supreme Court held as follows :-

“30. Of course, if the evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, it is always within the discretion of the trial court to permit recall of such a witness for re-examination-in-chief with permission to the defendants to cross-examine the witness thereafter. There is nothing to indicate that such is the situation in the present case.”

8. The trial court has used its discretion and has permitted the respondent to recall PW-2. As noted above, no new case is sought to be established. In fact, PW-2 in his cross-examination has admitted that he had signed the receipt which was written at the time when the

loan was granted. The re-examination of PW-2 would be necessary to do complete justice between the parties.

9. There is no merit in the petition. Accordingly, the petition is dismissed.

JAYANT NATH, J.

SEPTEMBER 06, 2016
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