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

+ CM(M) 1233/2015

M/S PIONEER EMBROIDERIES LTD Petitioner
Through: Mr.Piyush Prabhakar, Advocate.

versus

SURESH CHAND JAIN Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER
% **07.01.2016**

CM No.30647/2015

1. For the reasons stated in the application, 132 days' delay in re-filing the petition is condoned.
2. Application stands disposed of.

CM No.30646 & 30648 of 2015

1. Exemption allowed, subject to all just exceptions.
2. Applications stand disposed of.

CM(M) No.1233/2015

1. The petitioner is aggrieved by the order dated 08.04.2015 whereby the learned Trial Court declined the prayer of the petitioner to examine the two witnesses who were not cited in the list of witnesses.
2. Mr.Piyush Prabhakar, Advocate for the petitioner has submitted that the petitioner filed Civil Suit No.734/2010 against respondent herein namely

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Sh.Suresh Chand Jain as defendant No.1 and also impleading Sh.Ashok Kumar Shekhani and Sh.Vijay Singh Baid as defendants No.2 and 3 respectively. Since no relief was claimed against defendant No.2 Sh.Ashok Kumar Shekhani and defendant No.3 Sh.Vijay Singh Baid, their names were deleted from the array of parties. Learned counsel for the petitioner further submitted that had defendants No.2 and 3 filed the written statement in the Civil Suit, there was no need to examine them as plaintiff's witnesses.

3. Mr.Piyush Prabhakar, Advocate has submitted that Sh.Ashok Kumar Shekhani and Sh.Vijay Singh Baid are related to the Chairman of the plaintiff company as younger brother and nephew respectively and they are also first subscribers and promoters of the plaintiff company. Hence their examination is necessary for just decision of the case.

4. Perusal of the record shows that Civil Suit No.734/2010 was filed on 10.06.2010 by the present petitioner seeking injunction restraining respondent No.1/defendant No.1 from forcibly dispossessing the petitioner/plaintiff from the suit property. On 12.08.2010 the petitioner/plaintiff deleted the name of defendants No.2 and 3 from the array of parties in the Civil Suit No.734/2010.

5. On 21.04.2012 issues were settled by the learned Trial Court and case was listed for plaintiff's evidence. The plaintiff's evidence has already been closed. When the case was at the stage of defendant's evidence, the application under Order XVI Rule 3(2) read with Section 151 CPC has been filed to examine two more witnesses. The reason for not citing Sh.Ashok Kumar Shekhani and Sh.Vijay Singh Baid as witnesses in the list of witnesses has been given in para No.3 of the application as under:-

'3. That when counsel of plaintiff had inspected the file then it came to know that above witness has not been mentioned in

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the list of witnesses filed by the plaintiff. The examination of the above witness are the material witnesses for the fair disposal of the case, hence the present witnesses are very material one and are required to be examined.'

6. Relevant provisions of Order 16 Rule 1 and 1A of the Code read as under:-

“1. List of witnesses and summons to witnesses-

(1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.

(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.

(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list. (4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the [Court in this behalf within five days of presenting the list of witnesses under sub-rule (1)].

1A. Production of witnesses without summons- *Subject to the provisions of sub-rule (3) of rule 1, any party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents.”*

7. In Nandita Chaudhry vs. Surat Singh Rao, 2010 V AD(Delhi) 739, the

Court while dealing with Order 16 rule 1 Sub rule (1) and (2) held as under:-

“It is apparent from this Order of CPC that list of witnesses is to be filed within 15 days of framing of issues and thereafter the Court has to be informed as to out of the list which of the witnesses the party was desiring of summoning through Court process and the party was given liberty to obtain summons on making an appropriate application within 05 days of presenting the list of witness under Sub-Rule (1). The intention of the legislature is clear that an application has to be made well in advance from the date fixed for evidence and the application cannot be made just on the date when the evidence is to be recorded.”

8. By virtue of Order XVI Rule 1(3) CPC the Court can permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list filed by the party, if the party shows sufficient cause for the omission to mention the name of such witness in the said list.

9. A bare reading of the application filed by the petitioner to seek permission for examination of Sh.Ashok Kumar Shekhani and Sh.Vijay Singh Baid makes it clear that no sufficient cause has been shown for not citing their names in the list of witnesses filed at the relevant stage. It is also necessary to mention that Sh.Ashok Kumar Shekhani and Sh.Vijay Singh Baid are not only closely related to the Chairman of the petitioner/plaintiff company but were also initially arrayed as defendants No.2 and 3. However, subsequently their names were deleted by the petitioner/plaintiff from the array of parties as no relief was claimed against them. Thus, there was every opportunity for the petitioner to cite them as witnesses if their examination was necessary for proper adjudication of the controversy between the parties.

10. The petitioner/plaintiff closed the evidence of its own and only at the stage of defence evidence thought of examining Sh.Ashok Kumar Shekhani and Sh.Vijay Singh Baid, who were earlier impleaded as defendants No.2 and 3 in the Civil Suit but their names were deleted from the array of parties, without explaining under what circumstances they could not have been cited as witnesses in the list of witnesses.

11. The impugned order passed by the learned Trial Court declining the prayer of the petitioner to examine the two witnesses, who were not cited as witnesses in the list of witnesses, is well within the purview of provisions of Order XVI CPC.

12. Finding no illegality or infirmity in the impugned order, the petition is hereby dismissed.

PRATIBHA RANI, J.

JANUARY 07, 2016

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