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

+ CM(M) 1123/2016

M/S FATEH JEE CO & ORS

..... Petitioners

Through Mr.S.P.Jha & Mr.Naveen Kumar  
Chaudhary, Advocates

versus

L M NAGPAL & ORS

..... Respondents

Through None.

**CORAM:**

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

**ORDER**

% **08.11.2016**

**CM No. 41507/2016**(*exemption*)

Allowed subject to all just exceptions.

**CM(M) 1123/2016 & CM No. 41505/2016**(*stay*)

1. By the present petition filed under Article 227 of the Constitution of India the petitioners seek to impugn the order dated 06.09.2016 by which an application filed under Order 7 Rule 14(3) CPC was dismissed.
2. The plaintiff has filed the present suit for possession, delivery of title deeds, mesne profits and damages for property bearing No.C-39, Defence Colony, New Delhi. This suit was filed as a counter blast to the suit filed by the respondent for specific performance.
3. The plaintiff by the present application seeks to place on record two lease deeds namely a lease deed executed for property No.34, Ring Road, Lajpat Nagar, New Delhi and another lease deed for the property being No.D-298, Ground and First Floor, Defence Colony, New Delhi.
4. The trial court by the impugned order noted that the suit is pending

since 1997 and is only at the stage of plaintiff's evidence. It also noted that the lease deeds which the petitioners wish to file pertain to the properties bearing Nos.34, Ring Road, Lajpat Nagar, New Delhi and D-298, Ground and First Floor, Defence Colony, New Delhi. It further noted that there is nothing to show that the said properties are similar to the suit property. Further it is not clear as to why the petitioners seeks to place on record the lease deed pertaining to 2008 in 2016. The application was accordingly dismissed.

5. The learned counsel for the petitioners points out that though the suit of the petitioners was filed in 1997, there has been no progress in the suit as the entire issues has revolved around the suit for specific performance filed by the respondents. The suit of the respondents was finally dismissed by the Supreme Court vide judgment dated 24.04.2015. He submits that the application to bring on record the additional document was filed little before the evidence of the PW-1 was filed by the petitioners of Sh.Devinder Grewal.

6. Advance copy of the petition has been sent to the respondents/learned counsel for the respondents. None is present for the respondents.

7. Order 7 Rule 14(3) reads as follows:

**“14. Documents relied on in Plaint.-** Production of document on which plaintiff sues or relies

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.”

8. For the purpose of proving mesne profits and damages which would

be payable by the respondents, it is only the lease deeds of the properties similarly situated as the suit property which will be relevant. Hence, by the present application the petitioners had sought to file the lease deeds.

9. As pointed out by the learned counsel for the petitioners, it would not be easy for the petitioners to locate the lease deed of adjoining properties in the present period. Further one of the lease deeds which was sought to be filed by the petitioners pertains to the property No. D-298, Ground and First Floor, Defence Colony, New Delhi which is situated in the vicinity where the property of the petitioners is situated. This lease cannot be rejected on the ground that it pertains to a property which is not known to be identical to that of the suit property as done by the impugned order.

10. In view of the above, it is manifest that the impugned order suffers from material irregularity. The same is partly set aside. Petitioner may place on record the lease deed dated 04.02.2008 pertaining to property No.D-298, Ground and First Floor, Defence Colony, New Delhi. The other lease deed pertaining to property No.34, Ring Road, Lajpat Nagar, New Delhi which on the face of it is not of a similarly situated property as the suit property cannot be taken on record.

11. The petitioner is granted liberty to file any consequential application as per law. The present petition and all the pending applications stand disposed of.

**JAYANT NATH, J.**

**NOVEMBER 08, 2016/v**