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

% Judgment delivered on: 18.04.2016

+ **FAO (OS) No.12/2016**

DAYA KISHAN GOEL Appellant

versus

RAMESH CHANDER GOEL Respondent

Advocates who appeared in this case:

For the Appellant : Mr Manish K. Jha, Advocate.

For the Respondent : Mr P. D. Gupta with Mr Atul Gupta,
Advocates.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This appeal is directed against the order dated 02.11.2015, passed by a learned Single Judge of this Court in OA 431/2015, which, in turn, was a chamber appeal against the order dated 09.09.2015, passed by a Joint Registrar in IA 18799/2015. That was an application for permitting the appellant/defendant to produce the originals of the documents, which are set out at pages 33 to 41 of the paper book. The Joint Registrar had rejected the application by virtue of the order dated 09.09.2015. The learned Single Judge, by virtue of the impugned order, had come to the

conclusion that there was no illegality or perversity in the said order dated 09.09.2015 and, accordingly, dismissed the chamber appeal.

2. While doing so, the learned Single Judge has examined the matter threadbare. In particular, the learned Single Judge has referred to the order dated 15.02.2010, passed by the predecessor Judge in IA 1787/2010, which was an application under Order VI Rule 17 filed by the appellant/defendant for amendment of the written statement. That amendment was not being allowed by the learned Single Judge and, consequently, the learned counsel who was then appearing for the appellant/defendant stated that he wished to withdraw the said application with liberty to confront the plaintiff with the documents at the stage of cross-examination. Some of the documents referred to in the said order dated 15.02.2010 are the very same documents, which are the subject matter of the present appeal. Apart from this, the learned Single Judge had also referred to IA 1877/2010 for permission to place on record five additional documents. Out of which, four are common to the present proceedings. That application, being IA 1877/2010 (under Order VIII Rule 1A CPC), was disposed of on 01.04.2014, after recording the statement of the counsel for the appellant/defendant that the application

had become redundant.

3. Thus, it is clear that first of all the leave to introduce documents which had been sought by the appellant/defendant had been given up by the appellant/defendant himself on 15.02.2010, when liberty was given to the appellant/defendant to produce the documents for confronting the plaintiff at the time of plaintiff's cross-examination, which, incidentally was not done by the appellant/defendant. Secondly, the learned counsel for the appellant/defendant had categorically stated on 01.04.2014 that the application under Order VIII Rule 1A CPC had become redundant.

4. In the light of these facts, we do not find any error in the impugned judgment/order whereby the learned Single Judge came to the conclusion that the appellant/defendant cannot now be permitted to raise the issues with regard to the introduction of the documents in question after the same had been settled/given up by the appellant/defendant, as indicated above.

5. As noted earlier, out of nine documents, which were sought to be introduced by the appellant/defendant by virtue of the present proceedings, five were common to the earlier proceedings referred to and

which culminated on 01.04.2014. Four new documents are stated to be part of the present proceedings and they are listed at page 7 of the appeal paper book and are as under:-

- “(i) Bank Statement of Vipin Enterprises and Dinesh International Limited, the two entities, in which the parties in the suit did business together, for their bank accounts maintained with American Express Bank (now Standard Chartered Bank) and Punjab National Bank.
- (ii) Copy of Complaints being Company Case Number 1296/20-12 and Company Case Number 1297/20-12 filed by the ROC in the Court of Chief Metropolitan Magistrate, mentioning the change in share capital of Dinesh International Limited.
- (iii) Notification dated May 3, 2000, issued by Central Government in exercise of power conferred by S.5 and sub-section (1) and clause (a) of sub section (2) of the FEMA Act, with reference to foreign inward remittances.
- (iv) Certified copy of the document received from the ROC showing the increase in the share capital of the Dinesh International Limited in March 2005.”

6. Insofar as the documents at serial numbers (i) and (iv) are concerned, they were always accessible by the appellant/defendant and could have been produced at the earlier stages of the suit. Insofar as the documents at serial number (ii) are concerned, the respondent/plaintiff has already been cross-examined on that aspect of the matter and the

documents at that point of time were not summoned or produced by the appellant/defendant. Thus, insofar as the new documents at serial numbers (i), (ii) and (iv) are concerned, the learned Single Judge has not erred in refusing leave under Order VIII Rule 1A.

7. Insofar as the document at serial number (iii) is concerned, it is a Central Government Notification and is to be found in the Official Gazette and, therefore, could be produced before the Court at any stage.

8. The appeal has, therefore, no merit and the same is dismissed.

BADAR DURREZ AHMED, J

APRIL 18, 2016
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SANJEEV SACHDEVA, J