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

+ CM(M) 592/2017 & CM No.20243/2017 (for stay)

PARSHOTAM SARUP AGARWAL Petitioner
Through: Ms. Tamali Wad with Ms. Anu
Bagai & Mr. P K Rawal, Advocates

Versus

BHARAT SARUP AGARWAL & ORS Respondents
Through: Mr. Tarun Agarwal, Advocate for
R-2.
Mr. Amit Sethi, Advocate for R-3&4

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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17.10.2017

1. This petition under Article 227 of the Constitution of India impugns the order (dated 15th May, 2017 in CS(OS) No. 139/2016 of the Court of Dr. Kamini Lau, Additional District Judge, Tis Hazari Court, Delhi) of dismissal of the application of the petitioner under Order 7 Rule 14 of the CPC for filing Additional documents on record.
2. The petition was entertained and notice thereof ordered to be issued.
3. The Counsel for Ankur Agarwal, legal heir of Respondent No.2 Vijendra Sarup Agarwal and the counsel for the respondents no.3&4 namely, Shri Tarun Sarup Agarwal and M/s. M S Agarwal (HUF) appear.
4. The suit, from which this petition arises, was instituted as far back as in the year 2004, for the reliefs of (i) declaration that the respondents/defendants no.3&4 have no rights to use the front staircase of

Umrao Singh Bhawan or any portion forming part of Flat No. M-87 and M-36, Connaught Circus, New Delhi for ingress and egress to their flat no. M-85, Connaught Circus, New Delhi; (ii) for permanent injunction restraining the respondents/defendants no.3 and 4 from using any portion of M-87, Connaught Circus, New Delhi as passage for egress and ingress to M-85, Connaught Circus, New Delhi; (iii) for permanent injunction restraining the respondents/defendants no.1 to 4 from interfering in the reconstruction of the back staircase in the Umrao Singh Bhawan; and, (iv) for other ancillary reliefs.

5. The petitioner/plaintiff, on 12th July, 2006 tendered his affidavit by way of examination-in-chief in evidence but thereafter, he was not cross-examined for diverse reasons. Thereafter, the suit stood abated against respondent/defendant No.2, the evidence of the petitioner/ plaintiff was closed and the suit dismissed for non-prosecution.

6. However thereafter the suit has been permitted to be revived.

7. At this stage, before commencing the evidence of the petitioner/plaintiff, the application aforesaid to produce on record the partnership deed dated 16th February, 1993 was filed.

8. The learned Additional District Judge has vide the impugned order dismissed the said application reasoning:- (i) that there is no mention of the said partnership deed in the pleadings or in the documents attached to the plaint though the said partnership deed is mentioned in the partnership deed dated 6th April, 1993 on record; (ii) that in view of the partnership deed dated 6th April, 1993 already on record, the partnership deed now sought to be produced stands superseded and is of no relevance; and, (iii) that the

petitioner/plaintiff was unable to satisfy that the document in question was not in control of the petitioner/plaintiff.

9. Being of the view (a) that since the application was filed though long after the institution of the suit but prior to commencement of the evidence in the suit after the suit had been revived; (b) that the learned Additional District Judge has in reasoning as aforesaid conducted a mini trial and which is not permissible in law; and, (c) that in accordance with the well-settled principle that documents and other evidence are not to be pleaded, the reason of the partnership deed being not pleaded, is of no avail, I have straightaway enquired from the counsel for the respondents their opposition.

10. The counsel for the respondents/defendants no.3&4, besides supporting the reasoning given by the learned Additional District Judge, contends that though the petitioner/plaintiff filed two List of Reliance on earlier occasions, but no mention was made of the subject document therein. It is further contended that the application of the petitioner/plaintiff was bereft of any reasoning whatsoever.

11. The aforesaid arguments do not meet the prima facie opinion expressed by me hereinabove.

12. The counsel for the respondents/defendants no.3&4 is unable to rebut that there could be no mini trial at that stage.

13. As far as the ground of non-mentioning of reasons for belated filing of the document is concerned, the petitioner/plaintiff, in para 4 of the application, has stated that the said document was found with the Chartered Accountant of the business run under the partnership deed.

14. The counsel for the petitioner/plaintiff on enquiry with respect to the

need for production of the document when the partnership deed dated 6th April 1993 is already on record, states that the two partnership deeds are of two different financial years and the Clause 42 of each, which is material in the subject suit, is identical.

15. Considering the fact that for the reason of the illness of the petitioner/plaintiff, the suit, after long, has been permitted to be revived, I am of the view that the reason given in the application will suffice.

16. The counsel for the respondent/defendant no.2 at the outset argues that on demise of the respondent/defendant no.2 Vijendra Swarup Agarwal, besides his son Ankur Aggarwal, the wife and two daughters of respondent/defendant No.2 Vijendra Swarup Agarwal were also substituted in his place and have not been impleaded as parties to this petition.

17. I have enquired from the counsel, whether the counsel, before the Trial Court, is also appearing for the widow and daughters of the deceased respondent/defendant no.2.

18. The counsel replies in the affirmative.

19. In this light of the matter, it is not deemed appropriate to adjourn this proceeding to enable the petitioner/plaintiff to bring the missing legal representatives on record inasmuch as the missing legal representatives are also sufficiently represented before this Court and their interest in the litigation is the same as of the legal representative on record.

20. The counsel for the respondent/defendant no.2 has also argued that the respondent/defendant no.2 is not a party to the partnership. He has also sought to argue on the merits of the suit.

21. This Court, at this stage, is not concerned with the merits. Moreover, merely because a document is taken on record belatedly does not entitle the said document to be read in evidence till the same is proved in accordance with law and the relevance and effect of the said document is to be considered at the stage of final arguments.

22. The respondent/defendant no.1 is stated to be proceeded against ex parte in the suit.

23. For the reasons aforesaid, the petition is allowed. The impugned order dated 15th May, 2017 is set aside. Resultantly, the application of the petitioner/plaintiff under Order 7 Rule 14 is allowed and the document aforesaid of which two copies are sought to be filed, are permitted to be taken on record, subject to the petitioner/plaintiff, on or before 30th October, 2017, paying costs of Rs. 10,000/- to the counsel for respondent/defendant no.2 and of Rs. 20,000/- to the counsel for the respondents/defendant no.3&4.

24. In accordance with the earlier order dated 19.09.2017 in this proceeding, petitioner/plaintiff, on or before 30th October, 2017, is also permitted to file an additional affidavit by way of examination-in-chief for proving the document/s which has/have been permitted to be taken on record, with advance copy to counsel for the respondents.

Dasti.

RAJIV SAHAI ENDLAW, J

**OCTOBER 17, 2017
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