

\$~22

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

+ CM(M) 1041/2016

FOOD CORPORATION OF INDIA

..... Petitioner

Through: Mr.Rishi K.Awasthi and Ms.Ritu
Arora, Advocates.

versus

M/S MADAN LAL JAGGI & SONS & ORS

..... Respondents

Through: Mr.J.C.Mahindroo, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

18.05.2017

CM(M) 1041/2016

1. The petitioner Food Corporation of India (plaintiff in Civil Suit No.11827/2016) has invoked the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India impugning the order dated 24th September, 2016 whereby the application filed by the petitioner under Order XVIII Rule 17 read with Section 138 of Evidence Act read with Section 151 of Code of Civil Procedure has been dismissed with cost of Rs.5000/-.
2. The impugned order dated 24th September, 2016 reads as under:-

'24.09.2016

*Present : Sh. Suman Kumar, ld. counsel for plaintiff with Sh.
Yogender*

Singh, AGM (S& C).

Sh. K. Rehman, proxy ld. counsel for defendants.

Plaintiff counsel has moved application u/o 18 Rule 17 r/w Sec. 138 of Evidence Act r/w Sec. 151 CPC seeking permission to reexamine the plaintiff witness. Copy given.

Heard.

Proxy counsel for defendant submits that there is no need to file reply to this application and has orally opposed the application terming it to be tool to get the trial de novo.

Heard. Perused.

This case was instituted in the year 1988. Issues were framed on 05.01.96. In February, 2016 the case was received from High Court of Delhi on assignment after transfer. The application aforesaid filed today rests on the premise that several documents of plaintiff were not exhibited in the examination-in-chief/evidence affidavit of plaintiff witness and on that ground plaintiff witness is sought to be re-examined. Sh. Darshan Lal, AGM of plaintiff was examined as PW1 on 26.11.2010 and on 06.01.2011. Affidavit Ex. PW1/A embodies averments qua exhibition of 7 documents Ex. PW1 to Ex. PW7 and all these 7 documents have been mentioned in examination-in-chief of PW1 on 26.11.2010 whereas cross-examination of PW1 was conducted at length after his detailed examination-in-chief.

In the case of Surinder Kaur vs. Karanbir Singh, AIR 2004 P&H 377 it had been succinctly held that as per Rule 17 of Order 18 CPC it is only the requirement of the court that it may, at any state of the suit, recall any witness who had been examined earlier and put to him such questions as it may deem fit. The said provision does not permit a party to re-examine any witness to fill the lacuna in the evidence in the case. Such a provision is merely an enabling provision for the convenience of the Court.

In its wisdom the legislature repealed Rule 17 A of Order 18 of CPC w.e.f. 01.07.2012 which was concerning the production of evidence not previously given or it could not be produced despite due diligence. Allowing the plea of plaintiff is

simply to conduct the trial de novo. The matter is at the stage of final arguments. Plaintiff cannot be permitted to fill the lacuna crept in the evidence in the case. The application is devoid of merits and substance which being not maintainable is dismissed with costs of Rs. 5,000/ out of which Rs. 2,500/ to be deposited in PM National Relief Fund within a week and balance Rs. 2,500/ be paid to defendants/counsel against receipt also within the said period.

It is expected of ld. Counsels for the parties/officers of the Court to assist the Court in disposal of this very old case which is of the year 1988 by addressing final arguments and are at liberty to file written arguments not exceeding five pages each by next date.

Put upon 01.10.2016 for final arguments.

*Sd/-
ADJ (Central)01 Delhi
24.09.2016'*

3. Learned counsel for the petitioner has submitted that the petitioner before this Court is Food Corporation of India and at the appropriate stage, the documents [seven in number, copy of which are annexed with the petition as Annexure-P4 (colly.)] though existed on the record, could not be proved. Learned counsel for the petitioner prays that an opportunity may be granted to the petitioner to prove the said documents.

4. Mr.J.C.Mahindroo, learned counsel for the respondents submits that he has no objection if one opportunity is granted to the petitioner to prove the documents, as prayed for, subject to cost. He further submits that respondents have already paid Rs.50,000/- as cost to the petitioner herein.

5. In view of the submissions made by learned counsel for the petitioner and no-objection given by learned counsel for the respondents, the petition is allowed to the extent that petitioner/plaintiff Food Corporation of India is granted only one opportunity to prove the documents, copies of which are

annexed with this petition as Annexure-P4 (Colly.), subject to payment of cost of Rs.75,000/-.

6. Out of the total cost of Rs.75,000/-, Rs.50,000/- shall be paid to the respondents/defendants and Rs.25,000/- shall be deposited with Prime Minister Relief Fund on or before 31st May, 2017 i.e. the next date of hearing fixed before the learned Trial Court.

7. The parties are directed to appear before the learned Trial Court on the next date of hearing, which is stated to be 31st May, 2017. On the said date, the petitioner shall also place on record the proof of depositing/paying the cost. Thereafter the learned Trial Court shall fix a date granting only one opportunity to the petitioner/plaintiff to prove the documents, as prayed for.

8. The petition is allowed in above terms.

9. A copy of this order be sent to the Court concerned for information and compliance and be also given to learned counsel for the parties.

CM No.38152/2016

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 18, 2017

'st'