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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
CM(M) No.707/2017 & CM No.24404/2017 (for stay).
PANKAJ VERMA Petitioner
Through: Mr. Himanshu Jawa, Adv.
versus

NARENDER MOHAN Respondent
Through: None.

AND

+ CM(M) No.717/2017 & CM No.24920/2017 (for stay).
RAKESH TALWAR Petitioner
Through: Mr. Himanshu Jawa, Adv.
versus

NARENDER MOHAN Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **18.07.2017**

CM No.24405/2017 (for exemption) in CM(M) No.707/2017 and CM No.24921/2017 (for exemption) in CM(M) 717/2017.

1. Allowed, subject to just exceptions.
2. The CMs stand disposed of.

CM(M) No.707/2017 & CM No.24404/2017 (for stay) and CM(M) 717/2017 & CM No.24920/2017 (for stay).

3. The two petitions, both under Article 227 of the Constitution of India, impugn separate but identical orders (both dated 6th June, 2017 of the same Judge i.e. Additional District Judge (South-West), Pilot Court, Dwarka Courts, New Delhi in CS No.14/17 filed by each of the petitioners against the respondent) of dismissal of applications under Section 45 read with Section 73 of the Evidence Act, 1872 filed by the petitioners / plaintiffs

seeking that the signatures and thumb impression of the respondent / defendant on the documents may be compared with the admitted signatures and be verified by expert opinion through Forensic Science Laboratory (FSL).

4. The suits from which these petitions arise have been filed by each of the petitioners for specific performance of Agreements to Sell and in the alternative for recovery of compensation.

5. The petitioners / plaintiffs led their evidence.

6. The counsel for the petitioners / plaintiffs informs that the respondent / defendant did not cross-examine the witnesses of the petitioners / plaintiffs.

7. The impugned orders record that the respondent / defendant did not chose to lead his own evidence and which stands closed.

8. The learned Additional District Judge in the impugned orders has observed that the since the petitioners / plaintiffs in their evidence did not lead evidence which is now sought to be led, hence the petitioners / plaintiffs could not at that stage be allowed to lead additional evidence.

9. The learned Additional District Judge, after dismissing the applications, listed the suits for final arguments on 3rd July, 2017.

10. I have enquired from the counsel for the petitioners / plaintiffs, whether final arguments were heard on 3rd July, 2017.

11. The counsel for the petitioners / plaintiffs states that the petitioners / plaintiffs sought adjournment on 3rd July, 2017 and the suits were adjourned to 11th July, 2017 when the petitioners / plaintiffs again sought adjournment

and now the suits are listed for final arguments before the Additional District Judge today.

12. I have enquired from the counsel for the petitioners / plaintiffs, that once the respondent / defendant has not chosen to cross-examine the witnesses of the petitioners / plaintiffs and has also not chosen to lead any evidence of his own, what is the need for the petitioners / plaintiffs to have the signatures examined from an expert and to examine the said expert as their witness.

13. The counsel for the petitioners / plaintiffs states that though the respondent / defendant has not cross-examined the witnesses of the petitioners / plaintiffs and has also not led his own evidence but still since it is the duty of the petitioners / plaintiffs to prove their case, the petitioners / plaintiffs are desirous of leading additional evidence.

14. At this stage, need to interfere with the order of learned Additional District Judge, in exercise of jurisdiction under Article 227 of the Constitution of India, is not felt. The petitioners / plaintiffs in their evidence must have proved the documents on which the signatures of the respondent / defendant are sought to be examined by an expert. If the Court at the stage of hearing final arguments or at the stage of pronouncing judgment entertains any doubts as to the signature or feels the need for an expert opinion, the Court *suo motu* is empowered under Sections 45 and 73 of the Evidence Act, 1872 to direct so. Even otherwise, if the final judgment is against the petitioners / plaintiffs, the petitioners / plaintiffs at that stage can always urge that the petitioners / plaintiffs though had applied to the Suit Court for leading additional evidence but were denied.

15. For the reasons aforesaid, dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 18, 2017

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