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

+ CM(M) 922/2017

RAJ KISHORE SEJWAL & ANR.

..... Petitioners

Through: Mr. Sanjay Rathi, Mr. Ajay Chaudhry
and Mr. Animesh Mishra, Advs.

Versus

VIJAY SEHRAWAT & ANR.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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28.08.2017

CM No.30965/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CM(M) 922/2017 & CMs No.30964/2017 (for stay) & 30966/2017 (for condonation of 24 days delay in re-filing)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 22nd April, 2017 in CS No.83321/2016 of the Court of Civil Judge-02 (South), Saket Courts, New Delhi] of dismissal of an application filed by the petitioners/defendants at the stage of final arguments in the suit, to examine a handwriting expert with respect to the documents on which the respondents/plaintiffs had denied their signatures.
4. I have enquired from the counsel for the petitioners/defendants the stage at which the said documents were filed by the petitioners/defendants.

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5. The counsel for the petitioners/defendants states that the said documents were filed along with the written statement.

6. On further enquiry, whether the said documents were admitted by the respondents/plaintiffs, the reply is that the respondents/plaintiffs have disputed the said documents from the beginning.

7. A perusal of the issues framed in the suit on 13th May, 2009 shows the Issues No.3&4 in the suit to be as under:

“3. Whether the defendants are claiming rights over the suit property on the basis of forged and fabricated documents? OPP

4. Whether the defendant No.1 had sold the suit property to defendant No.2 on 9/11/1992? OPD”

8. The counsel for the petitioners/defendants, on enquiry, confirms that the documents sought to be examined are of 9th November, 1992.

9. It is thus evident that genuineness of the documents was expressly in issue in the suit. The petitioners/defendants, if desired to examine a handwriting expert to prove the signatures of the respondents/plaintiffs on the documents, ought to have done so at the appropriate stage and cannot claim to derail the hearing of final arguments by making applications for re-opening the evidence.

10. The counsel for the petitioners/defendants has argued that the witness may be permitted to be examined for complete adjudication.

11. No case of the adjudication being not complete is made out. It is not as if the petitioners/defendants have been deprived of any opportunity. What is being sought is to derail the hearing of final arguments.

12. On enquiry, it is stated that the suit from which this petition arises is of the year 2009 and was pending for evidence for nearly eight years. Ample opportunities have been availed.

13. Even otherwise, examination of a handwriting expert by the petitioners/defendants would not lead to complete adjudication. An opportunity will have to be given to the respondents/plaintiffs to, in rebuttal, lead evidence. Invariably what happens is that the experts examined by the respective parties report and depose in favour of their respective parties and ultimately it is left to the Court to decide the genuineness of the signatures. Sections 45 and 47 of the Evidence Act, 1872 amply empower the Court, if at that stage, of its own to decide the need to have the signatures examined from an expert.

14. No error is found in the impugned order.

15. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

AUGUST 28, 2017

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