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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) No.857/2017 & CM No.28488/2017 (for stay).
PRADEEP KUMAR JAIN Petitioner
Through: Mr. Rajnesh Bansal, Adv.
versus
V D CHAUDHARY Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **09.08.2017**

CM No.28486/2017 (for exemption) and CM No.28487/2017 (exemption from filing Trial Court record).

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

CM(M) No.857/2017 & CM No.28488/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order (dated 20th July, 2017 in CS No.476460/15 of the Court of Additional District Judge-01 (North-East), Karkardooma Courts, Delhi) disposing of as many as three applications of the petitioner / defendant in the suit.
4. The first application was for putting exhibit marks on the documents which according to the petitioner / defendant had been proved by the petitioner / defendant in his evidence but on which, at the time of recording of the evidence, on objection being taken by the respondent / plaintiff, the exhibit numbers given as per the affidavit by way of examination-in-chief were removed and marks put.

5. The counsel for the petitioner / defendant states that he would be satisfied if in consonance with the impugned order, instead of the said application being dismissed, the same is recorded as disposed of since the learned Additional District Judge has opined that the matter of proof is to be considered on the basis of the evidence led.
6. Though in my view no such modification is required inasmuch as the order of the learned Additional District Judge is clear in this respect, but for the satisfaction of the petitioner / defendant it is clarified that the question, whether the documents tendered by the petitioner / defendant in evidence have been proved and admitted into evidence or not is kept open for decision at the time of final adjudication in the suit.
7. The second application filed by the petitioner / defendant was for a direction to the respondent / plaintiff to furnish his specimen signatures for comparison by a handwriting expert.
8. The counsel for the petitioner / defendant has argued (i) that the petitioner / defendant, at an earlier stage, had filed an application for reference of the disputed signatures to CSFL or to a handwriting expert to the satisfaction of the Court; (ii) that the respondent / plaintiff had also filed a similar application; and, (iii) however no orders were made on the said application as the Court was of the opinion that the parties should first lead their evidence and the said aspect shall be decided later.
9. I have enquired from the counsel for the petitioner / defendant whether the said opinion of the Court is reflected in the order sheet.
10. The counsel for the petitioner / defendant replies in the negative.

11. Once that is so, then even if the application was filed and was pending it would be deemed to have been not pressed and / or dismissed and no benefit thereof can be availed by the petitioner / defendant.

12. In fact there was no need for the petitioner / defendant to make such an application. If the petitioner / defendant wanted to have the disputed signatures examined, as he purports to have desired by filing of the application, the petitioner / defendant should have, at appropriate stage sought permission of the Court for the handwriting expert to photograph the documents and could have presented / submitted the report of the handwriting expert as his document and summoned / produced the handwriting expert in his evidence. The same having not been done, the petitioner / defendant cannot be permitted, when the suit is ripe for final arguments, to indulge in such exercise.

13. I may in this regard notice that the suit from which this petition arises has been instituted by the respondent / plaintiff as the landlord for ejectment of the petitioner / defendant who was claimed to have been a tenant under the respondent / plaintiff at a rent of Rs.32,000/- per month, after the determination of the tenancy of the petitioner / defendant, and for recovery of arrears of rent and *mesne* profits. The suit is pending since the year 2011. The evidence of the petitioner / defendant was closed on 20th August, 2016. On the petitioner / defendant approaching this Court by way of CM(M) No.785/2016, vide order dated 5th September, 2016 therein the petitioner / defendant was granted one opportunity to examine the DW3 only. Thereafter the Suit Court again on 28th March, 2017 closed the evidence of the petitioner / defendant.

14. In the aforesaid scenario, the application aforesaid filed by the petitioner / defendant is nothing but a dilatory tactics.

15. Even otherwise it is found that the examination of handwriting expert by any litigant to a *lis* does not serve any purpose as invariably in all cases opposite party also produces a report of handwriting expert with both experts deposing in favour of their respective clients and ultimately it is the Court which has to form an opinion under Section 73 of the Indian Evidence Act, 1872. For this reason also, it is felt that no purpose is served by examination of handwriting expert and if the Court at the time of hearing final arguments of final adjudication needs the report of any handwriting expert, can always seek the same under Section 45 read with Section 73 of the Indian Evidence Act. No opportunity in this regard can be given to the petitioner / defendant to again make a request to the learned Additional District Judge inasmuch as the discretion of the learned Additional District Judge in this regard has to be his own.

16. The third application filed by the petitioner / defendant was for summoning as many as five additional witnesses. The counsel for the petitioner / defendant has argued that DW3 D.P. Sachdeva examined by him turned hostile to the petitioner / defendant and deposed falsely and for which purpose the five witnesses are required to be examined.

17. Once the evidence of the petitioner / defendant has been closed on 20th August, 2016 and vide order dated 30th September, 2016 of this Court only one final opportunity to examine the DW3 was granted and the evidence of the petitioner / defendant again stands closed, the petitioner / defendant cannot be permitted to re-open his evidence.

18. There is no merit in the petition.
19. Dismissed.
20. At this stage, the counsel for the petitioner / defendant states that notice has been issued of CM(M) No.497/2017 also arising from the same suit and which is listed on 27th November, 2017.
21. It has been suggested to the counsel for the petitioner / defendant that the file of the said CM(M) No.497/2017 can also be requisitioned today and the same can also be heard today. However the counsel for the petitioner / defendant is not agreeable.
22. On enquiry, it is stated that there is no stay of proceeding in the suit by the order in CM(M) No.497/2017.
23. In the circumstances, it is clarified that the proceedings before the Trial Court to be not considered as stayed, owing to the pendency of CM(M) No.497/2017.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 09, 2017

‘pp’..