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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1151/2017 & CM No.37331/2017 (for stay).
AJAY KUMAR SHUKLA Petitioner
Through: Mr. A.K. Mishra, Adv.
versus
RAJESH GOYAL & ORS Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **10.11.2017**

CM No.37332/2017 (for exemption) and CM No.37333/2017 (exemption from filing complete Trial Court record).

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

CM(M) 1151/2017 & CM No.37331/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order [dated 29th July, 2017 in CS No.1160/16 of the Court of Additional District Judge-02, Shahdara, Karkardooma Courts, Delhi] dismissing the application of the petitioner / plaintiff under Order XVIII Rule 17 of the Code of Civil Procedure, 1908 (CPC) for re-opening the evidence of the petitioner / plaintiff for examining the Public Information Officer (PIO) of the office of the Sub Registrar, IV-A, Shahdara, Seemapuri, Delhi, to prove, that an immovable property was situated in an unauthorised colony.
4. The learned Additional District Judge, vide the impugned order, also posted the suit for evidence of the respondents / defendants to 9th October, 2017. The counsel for the petitioner / plaintiff on enquiry states that only one witness of the respondents / defendants remains to be examined.

5. Though the learned Additional District Judge has dismissed the application reasoning that the prayer for examining of the witness who had not been examined earlier is beyond the purview of Order XVIII Rule 17 of the CPC and which is not the correct position in law in view of ***K.K. Velusamy Vs. N. Palanisamy*** (2011) 11 SCC 275 but the counsel for the petitioner / plaintiff along with this petition, has neither filed the copy of the issues or pleadings in the suit from which this petition arises nor the order sheet in the suit and wherefrom the relevance and number of opportunities to lead evidence availed of by the petitioner / plaintiff could have been known.

6. The counsel for the petitioner / plaintiff on enquiry states that the suit was instituted on 17th April, 2013. The suit has thus already been pending for more than four and a half years.

7. The counsel for the petitioner / plaintiff on enquiry states that the respondents / defendants had agreed to sell the immovable property aforesaid to the petitioner / plaintiff and had received a sum of Rs.8,00,000/- as advance; subsequently the petitioner / plaintiff learnt that the property was situated in an unauthorised colony and wants to prove the same.

8. Without knowing whether there is any plea to the said effect in the plaint and / or whether any issue has been pressed thereon, evidence cannot be permitted at the mere asking as is being done. The purport of framing of issues is to guide the trial and the parties cannot during trial travel beyond the issues.

9. Even otherwise, the prayer for examination of the PIO is misconceived. The PIO appointed under the Right to Information Act, 2005 (RTI) cannot make any statement orally and if at all the locality in which the

property is situated in an unauthorised colony, there would be notifications of the concerned Government with respect thereto. The petitioner / plaintiff instead of showing the said notification, wants to prove the reply received to a RTI application and which is not primary evidence within the meaning of Section 62 of the Indian Evidence Act, 1872. The entire attempt, for this reason also, is misguided.

10. There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

NOVEMBER 10, 2017

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