

\$~32.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1134/2017 & CM No.36868/2017 (for stay).
AMITA KHOSLA & ANR Petitioners
Through: Mr. Sunil Dutt Dixit, Adv.
versus
SUNITA KHOSLA & ORS Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **13.10.2017**

CM No.36867/2017(for exemption).

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

CM(M) 1134/2017 & CM No.36868/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order (dated 10th August, 2017 in CS SCJ No.608617/16 of the Court of Civil Judge-07, (West District), Tis Hazari Courts, Delhi) of dismissal of the application filed by the petitioners / defendants under Section 65 of the Indian Evidence Act, 1872 to give secondary evidence of documents.
4. Attention of the counsel for the petitioners / defendants is invited to *Prem Chandra Jain Vs. Sri Ram* MANU/DE/2860/2009, *Sanyogta Prakash Vs. Dhira Bala Malhotra* 2010 (115) DRJ 109 and *Jai Prakash Aggarwal Vs. State* (2017) 236 DLT 632 holding that no such application lies and the practice developed by the Bar in this regard is contrary to the Statute. Notwithstanding the said unequivocal judgments of this Court, it is unfortunate that applications continue to be filed by the Advocates and continue to be dealt with on merits by the Courts. Once the application itself

was not maintainable, the question of the challenge to the dismissal thereof being entertained does not arise.

5. It has been held in the judgments aforesaid that the Indian Evidence Act permits proof of documents by primary evidence and in certain circumstances by secondary evidence and it is for a party to the *lis* to lead either of the said evidences. Of course when secondary evidence is led, the facts and circumstances in which it can be led shall also be proved besides proving the document by secondary evidence.

6. However it is found that the learned Additional District Judge in the impugned order, besides reasoning that the evidence sought to be led is beyond pleadings has also reasoned that where the original documents are not produced at any time nor any factual foundation to lead secondary evidence has been made it is not permissible for the Court to allow a party to adduce secondary evidence.

7. The counsel for the petitioners / defendants on enquiry states that the suit is pending at the stage of the petitioners / defendants' evidence.

8. It is made clear that nothing contained in the impugned order dated 10th August, 2017 or in this order shall come in the way of the petitioners / defendants, in their evidence, proving by leading secondary evidence what is within the domain and relevancy of the issues framed in the suit; else the petition is dismissed.

No costs.

Dasti.

RAJIV SAHAI ENDLAW, J

OCTOBER 13, 2017/‘pp’..
CM(M) 1134/2017

page 2 of 2