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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1193/2017 and CM No.38657/2017 (for stay).
RAJENDER KUMAR JAIN Petitioner
Through: Mr. N.K. Goyal, Adv.
versus
JYOTSNA JAIN Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **31.10.2017**

CM No.38658/2017 (for exemption) and CM No.38659/2017 (exemption from filing complete Trial Court record).

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

CM(M) 1193/2017 and CM No.38657/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns (i) the order [dated 29th May, 2017 in CS No.6628/2014 of the Court of Additional Civil Judge (East), Karkardooma Courts, Delhi] refusing permission to the petitioner / defendant to place on record the affidavit by way of examination-in-chief of the DW-2 Sanjay Kamal Jain and to examine him as the witness; and, (ii) the order dated 7th September, 2017 dismissing the application of the petitioner / defendant for review of the order dated 29th May, 2017.

4. The respondent / plaintiff has sued the petitioner / defendant for ejectment of the petitioner / defendant from immovable property in which,

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according to the respondent / plaintiff, the petitioner / defendant was a tenant under the respondent / plaintiff at a rent of Rs.9,000/- per month, and for ancillary reliefs. The petitioner / defendant is contesting the suit by taking a plea in the written statement that though the premises were taken on rent at a rate of Rs.4,500/- per month but by a subsequent agreement the rate of rent was reduced to Rs.1,200/- per month by paying to the respondent / plaintiff a refundable security deposit of Rs.5,00,000/- in cash.

5. Needless to state that if the rent is in excess of Rs.3,500/- per month the provisions of Delhi Rent Control Act, 1958 will not apply and the Civil Court will have jurisdiction to pass an order of ejectment of the petitioner / defendant, there being no admitted registered lease deed between the parties. However, if rent is of Rs.1,200/- per month, the Civil Court will have no jurisdiction.

6. The petitioner / defendant, at the stage of evidence of the petitioner / defendant, wanted to file affidavit by way of examination-in-chief of DW-2 Sanjay Kamal Jain aforesaid deposing that the sum of Rs.5,00,000/- in cash was paid by the petitioner / defendant to the husband of the respondent / plaintiff in his presence.

7. The learned Civil Judge has declined the said request reasoning (i) that no list of witnesses had been presented by the petitioner / defendant; (ii) no permission had been sought to examine the said Sanjay Kamal Jain as a witness; (iii) Order XVI Rule 1 of the Code of Civil Procedure, 1908 (CPC) mandates that after framing of issues, list of witnesses has to be produced.

8. From a perusal of the affidavit by way of examination-in-chief of the petitioner / defendant on record, it is found that the petitioner / defendant in his own examination-in-chief has not deposed of having paid the said sum of Rs.5,00,000/- in the presence of any Sanjay Kamal Jain. No such plea is there in the written statement also.

9. I have enquired from the counsel for the petitioner / defendant, whether the petitioner / defendant in the cross-examination of the respondent / plaintiff and her witnesses put it to the respondent / plaintiff or to her witnesses that the said sum of Rs.5,00,000/- was paid in the presence of the said Sanjay Kamal Jain.

10. The counsel for the petitioner / defendant though has not filed the transcript of the cross-examination by the petitioner / defendant of the respondent / plaintiff or her witnesses but has in Court handed over first two pages of the said cross-examination recorded on 7th December, 2016 (which are taken on record) and which though are found to contain a suggestion of payment of Rs.5,00,000/- but not found to contain the name of the said Sanjay Kamal Jain.

11. I have enquired from the counsel for the petitioner / defendant as to how the petitioner / defendant, without putting the same to the respondent / plaintiff, can examine the said Sanjay Kamal Jain and what purpose the said evidence would serve.

12. The counsel for the petitioner / defendant states that the said question and the weightage to be given to the evidence is to be considered at the final stage. He has also contended that the petitioner / defendant was not

intending to summon the said Sanjay Kamal Jain and has produced the said Sanjay Kamal Jain on his own responsibility and since Sanjay Kamal Jain was present in the Court, he should have been permitted to be examined as witness. Reliance in this regard is placed on *Mange Ram Vs. Brij Mohan* AIR 1983 SC 925.

13. Though undoubtedly the learned Civil Judge is not correct in law in so far as observing that Sanjay Kamal Jain could not have been examined for the reason of having not been named in the list of witnesses, inasmuch as the said Sanjay Kamal Jain was being produced by the petitioner / defendant on his own before the Court and though traditionally the Courts have taken a view that the weightage to be given to the testimony of any witness is to be considered only at the final stage but with the changing times and with docket explosion before the Courts and dilatory practices adopted by litigants to delay disposal of suits and which delay is affecting administration of justice, time has come for the Courts to start playing a more active role during the trial of a suit and not be a silent spectators and to apply the mind only at the final stage. Examination and cross-examination of witnesses, whose testimony, on the basis what has unfolded in the trial, has no relevance, should not be permitted on the specious plea of the said aspect being required to be considered at the stage of final arguments only.

14. If we apply the said parameters, then the statement, even if any, of the said Sanjay Kamal Jain of the payment in his presence, without the petitioner / defendant having put the same to the respondent / plaintiff in

cross-examination and without the petitioner / defendant in his own examination-in-chief having deposed so, is of no avail and the time of the Court is not to be wasted unnecessarily.

15. There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 31, 2017

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