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

+ CM(M) 1248/2017

RANJANA SETH

..... Petitioner

Through: Mr. Sunil Ahuja, Adv.

Versus

PREM RANI KHANNA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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03.11.2017

CM No.39586/2017 (for exemption)

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

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3. This petition under Article 227 of the Constitution of India impugns the order dated [9th October, 2017 in Civil Suit No.14265/2016 (Old No.271/2016) of the Court of Additional District Judge-10 (ADJ), District Central, Tis Hazari Courts, Delhi] refusing to summon Sh. K.C. Khanna cited by the petitioner / defendant as a witness in the suit.
4. The impugned order records i) that a notice under Order XVI Rule 12 of the Code of Civil Procedure, 1908 (CPC) was issued to the said witness; ii) that the said witness refused to accept the notice; iii) that the said witness pursuant to an earlier order had been summoned and a Court Commissioner appointed to record his evidence; iv) that the witness had sent a letter dated 2nd January, 2017 along with documents in response to the summons of the Court; and, v) that taking further coercive steps against the said witness would delay the matter.

5. The counsel for the petitioner / defendant on enquiry states i) that the suit, from which this petition arises, has been filed by the respondent / plaintiff who is the mother of the petitioner / defendant, for recovery of possession and *mesne profits* of portion of the property in possession of the petitioner / defendant, claiming that the respondent / plaintiff is the owner of the said property and the petitioner / defendant was residing therein as a daughter; ii) that it is the defence of the petitioner / defendant that the said portion of the property in possession of the petitioner / defendant was built by the petitioner / defendant herself in terms of the Family Settlement of 1983-84; iii) that Sh. K.C. Khanna who was sought to be summoned as a witness is the tax advocate of the family and he was summoned to prove the income tax returns filed by the petitioner / defendant in the relevant years to show the expenses incurred by the petitioner / defendant in construction of the portion of the property in her possession; iv) that though the petitioner / defendant had attempted to get the said records from the Income Tax Office but the Income Tax Office replied that the records were not available; v) that the aforesaid witness being the tax advocate used to keep the copies of the income tax returns of the petitioner / defendant in his office; and, vi) that the documents which the witness has sent are the complete file of the copies of the income tax returns of the petitioner / defendant with the said witness.

6. I have next enquired from the counsel for the petitioner / defendant that if the witness has already produced the documents which were sought from him, what is the need to examine him further. I may in this context also record that the petitioner/defendant has neither placed before this Court

the copy of the order framing issues in the suit nor any list of reliance in which the said documents may have been relied upon nor the list of witnesses. Without the same, a wild goose chase cannot be permitted.

7. No proper answer is forthcoming as to why the presence of the witness is required and as to why the petitioner / defendant in her own evidence cannot prove the said documents if is in a position to prove the same. I may in this context also record that income tax return has to be proved by the assessee and not by the Chartered Accountant or the advocate through whom the assessee has filed the same.

8. The counsel for the petitioner / defendant then states that the learned ADJ, vide the impugned order, has also ordered that the documents sent by the witness will not be considered for the purpose of evidence.

9. Without the petitioner / defendant making a claim before the Court for proving the said documents herself, no error can be found with the order.

10. On enquiry, it is informed that the cross-examination of the petitioner / defendant is still going on and the suit is listed next on 27th February, 2018 for the said purpose.

11. This petition is disposed of with liberty to the petitioner / defendant to apply to the learned ADJ to herself prove the documents which have been sent by the witness Sh. K.C. Khanna and subject to the said application being filed on or before 9th November, 2017, the same shall be considered in accordance with law.

No costs.

RAJIV SAHAI ENDLAW, J

NOVEMBER 03, 2017/‘gsr’..