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

+ CM(M) 1309/2017

SANJAY KUMAR & ANR

..... Petitioners

Through: Mr. Nitin Mittal, Advocate

versus

DELHI DEVELOPMENT AUTHORITY & ORS Respondents

Through: Mr. Arjun Pant, Adv. for R1/DDA

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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21.11.2017

CM No.42040-42041/2017 (both for exemptions)

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

CM(M) 1309/2017 & CM No.42039/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 8th September, 2017 in Suit No.607704/2016 of the Court of Additional District Judge-02, West District, Tis Hazari Courts, Delhi] of dismissal of the application of the petitioners/plaintiffs under Order VII Rule 14(3) of the CPC for filing additional documents.
4. The learned Additional District Judge has reasoned that the Suit of the petitioners/plaintiffs is for specific performance of an agreement to sell of immovable property and the reasons given for not filing the documents earlier are false.

5. Be that as it may, having looked at the nature of the documents sought to be filed and which are listed in the impugned order, I have enquired from the counsel for the petitioners/plaintiffs, whether not the copies of the complaints claimed to have been lodged about loss of documents and newspaper articles about the drowning of the vehicle of the petitioners/plaintiffs and in which, according to the petitioners/plaintiffs, the agreement to sell etc. were also kept, are secondary evidence and whether not the loss of documents has to be proved by the petitioners/plaintiffs by their own statement. A newspaper article or a unilateral complaint would not constitute proof of loss.

6. The counsel for the petitioners/plaintiffs states that an FIR of the accident and loss of documents was also registered.

7. The only other documents which the petitioners/plaintiffs sought to file were the copy of the passbooks of one D.K. Messey and the sister of the petitioners/plaintiffs. The position with respect to the said passbooks is the same. The appropriate remedy for the petitioners/plaintiffs is to obtain copy of the statements of accounts certified under the Bankers Book Evidence Act, 1891 and to place the same before the Court.

8. In this view of the matter, since the genuineness of the certified copy of the FIR and of the certified copy of the statements of accounts cannot be disputed, it is deemed appropriate to allow the petitioners/plaintiffs to place the said documents only.

9. The impugned order records that the contesting respondents No.2 to 8 had not opposed the application. The counsel for the petitioners/plaintiffs also states so.

10. In this view of the matter, need to issue notice of the petition is not felt.
11. Subject to the petitioners, on or before the next date in the Suit, i.e. 19th December, 2017, placing before the Court with advance copy to the counsel for the respondents No.2 to 8, certified copies of the FIR and the statements of accounts of D.K. Messey and sister of the petitioners/plaintiffs duly certified under the Bankers Book Evidence Act, 1891 and further subject to the petitioner/plaintiffs paying costs of Rs.25,000/- to the counsel for respondents No.2 to 8, the said documents shall be taken on record.
12. The petition is disposed of accordingly.

RAJIV SAHAI ENDLAW, J

NOVEMBER 21, 2017
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