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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 6th February, 2018

+ CM(M) 143/2018

ANUJ LEEKHA

..... Petitioner

Through: Mr. Suhail Dutt, Senior Advocate
with Mr. Sudarsh Menon, Mr. Ram
Gupta & Mr. Sankalp Goswami,
Advocates.

versus

KRISHNA LEEKHA (DEAD) THR LRs & ORS

.... Respondents

Through: Ms. Rachna Aggarwal, Advocate for
R-1.
Mr. Sumit Sinha, Advocate for R-2.
Mr. S.G.Asthana, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

CM No.4639/2018 (exemption)

Allowed, subject to all just exceptions.

CM(M) 143/2018 & CM No.4638/2018 (stay)

1. The petitioner is the plaintiff in civil suit (CS No.208909/2016) which was instituted in 2008 seeking recovery of Rs.66,46,023/-, the respondents being the surviving defendants contesting the same. The plaintiff had impleaded Krishna Leekha and ICICI Bank Limited as

first and fifth defendants, the former having died and latter ICICI Bank Limited dropped from the fray, Krishna Leekha (deceased defendant) now being represented by her legal heirs, the respondents.

2. The petitioner as plaintiff had submitted his affidavit in July, 2015 for being tendered in evidence. It appears that along with the affidavit he had filed certain documents, proof in regard to some of which was dependent upon certain official witnesses to be summoned and examined. The affidavit, it turns out, would not refer to the documents which were made part thereof as “exhibits”. It may also be added here that the documents in question were earlier put to the defendants at the stage of admission/denial but the same were not admitted and, therefore, it became the responsibility of the plaintiff to adduce strict proof in their respect.

3. When the matter came up for recording of the evidence of the petitioner (as PW-1) on 01.02.2018, it came to be submitted that the defendants were ready to admit some of the said documents. The trial judge noted this submission in the proceedings recorded on 01.02.2018 but then pointed out that the documents had not been referred to as “exhibits”. It is against this backdrop that the petitioner wanted withdrawal of the said affidavit eventually to be replaced by a fresh affidavit which was not acceptable to the trial judge, assumably on objections being taken by the defendants. It is the said view taken by the Additional District Judge which is sought to be assailed through the petition at hand.

4. The respondents have appeared on advance notice through their respective counsel. They have been heard. All sides agree, through

their counsel, that though the evidence could be tendered by affidavit, the exercise of labelling documents as exhibits (or marks) is a responsibility of the Court which is to be undertaken as the deposition progresses, it being contingent upon satisfaction being recorded about the admissibility and relevancy of the documents as indeed the mode of the proof.

5. In these circumstances, all sides now agree that there would be no need for the affidavit already on record to be taken off or it to be replaced by a fresh affidavit wherein such documents would be referred to as exhibits or marks. The documents can be appropriately labelled upon the affidavit and the documents in question being tendered in evidence by the petitioner (plaintiff) appearing as his own witness (PW-1). But, given the fact that the defendants in the suit are now inclined to admit some of the documents for which the plaintiff otherwise would be obliged to summon official witnesses, it would be proper that the parties undertake a fresh exercise of admission/denial in their respect before the petitioner enters the witness box.

6. Ordered accordingly.

7. The petition and the application are disposed of with above observations.

8. *Dasti*, under the signatures of Court Master.

R.K.GAUBA, J

FEBRUARY 06, 2018

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