$~13 AND 14

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

\+ **CM(M) 225/2018 and CM No.7535/2018**

BANSI LAL ..... Petitioner

Through: Mr.Praveen Suri, Advocate

versus

MANISHA CHAUHAN ..... Respondent

Through: Mr.Sanjay Tripathi, Advocate

\+ **CM(M) 226/2018 and CM No.7537/2018**

BANSI LAL ..... Petitioner

Through: Mr.Praveen Suri, Advocate

versus

JAWAHAR SINGH & ANR ..... Respondents

Through: Mr.Sanjay Tripathi, Advocate

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

O R D E R

% **09.08.2018**

1. Initial submissions have been made on behalf of either side.

2. Vide the present petition, the petitioner assails the impugned order dated 27.1.2018 of the learned Additional Rent Controller, Pilot Court, Central in Eviction Petition No.587/17 vide which an application under Order VII Rule 14 Sub-Clause 3 read with Section

151 CPC filed on behalf of the petitioner was declined, with the matter having been renotified for orders on 'Leave to Defend' filed by the respondent to the eviction petition arrayed on record as the respondent to the present petition as well. Vide the said application the applicant/petitioner sought to make things more clear in relation to the site plan previously submitted on the record before the learned Trial Court to substantiate his contentions to the effect that there was no alternative accommodation available. The site plan was already on record as filed by the petitioner previously along with the details of the portions though the names of the tenants were not specified.

3. Apart from the same through the said application the applicant/petitioner also sought to place some additional documents on records, i.e., counter-foils of the rent receipts and PAN number of the petitioner as well as Auditor's report the income tax return of M/s Bansi Lal & Sons Jewellers of which the petitioner is a partner and also the Sales-Tax number Vat number in the name of M/s Bansi Lal & Sons Jewellers along with their details and income tax returns of the petitioner for the assessment year 2015-16 along with its computation as well as the Income Tax Return for the assessment year 2016-17 along with its computation in order to show that the petitioner was working and to falsify the defence of the respondent that the shops were vacated and the petitioner was hiding this aspect.

4. Reliance was placed, during the course of proceedings vide the impugned order dated 27.1.2018 on the verdict of this Court in the case of ***Gold Rock World Trade Ltd. v. Veejay Lakshmi Engineering***

Works Ltd. (2008) 149 PLR 40 with observations to the effect:

> "*8. As already mentioned above the main objective of the plaintiff is to introduce the said three letters through the present amendment application as well as application filed by the plaintiff under Order 7 Rule 14 CPC. Under Order 13 Rule 1 CPC it is incumbent upon both the parties to produce the original documents before the settlement of issues in a case. Order 7 Rule 14 CPC also obligates the plaintiff to produce document upon which he has relied upon at the time of the presentation of the plaint and if not produced at that stage then such a document can be received in evidence only with the leave of the Court and not otherwise. For seeking leave of the Court the parties seeking to produce documents at a belated stage must satisfy the Court, that the said documents were not within his knowledge earlier or could not be produced by him at the appropriate time in spite of exercise of due diligence. In the facts of the present case the plaintiff has not given any reasons for not having produced the said documents at the time of the presentation of plaint or even before the settlement of issues. The plaintiff has also not referred to exchange of any such communication between him and Jamila Gupta either in the plaint or in the replication. Out of the three letters two letters were alleged to have been received by the plaintiff form the Jamila Gupta and, therefore, it cannot be said that they were not in possession and power of the plaintiff. While dealing with the scope of Order 7 Rule 14 CPC this Court in the case of Gold Rock World Trade Ltd. vs Veejay Lakshmi Engineering Works Ltd. reported in (2008)149 PLR 40 held as under:-*

> *"Consequently , before leave of Court can be granted for receiving documents in evidence at a belated stage, the party seeking to produce the documents must satisfy the court that the said court that the said documents were earlier not within Party's knowledge or could not be produced at the appropriate time in spite of due diligence. Conditions necessary before leave of court can be granted have not been satisfied. It can cannot be said that the plaintiff was not aware of the documents earlier, or that the same could not be produced in spite of due diligence on the part of the plaintiff. As the plaintiff was not diligent enough at that point of time, this Court is left with no alternative but to reject its request."*

> *9. In the light of the aforesaid discussion this Court does not find any merit in the said two applications as the incorporation of new facts in the plaint and filing of the said three letters by the plaintiff through I.A. Nos. 2742/2012 and 4595/2012 are with utter dishonest and oblique motives. Both these applications are dismissed with costs of Rs. 15,000/-.*"

5. On behalf of the respondent learned counsel for the respondent is present and has also filed reply to the application opposing the prayer made by the petitioner submitting *inter alia* to the effect that the documents on which the petitioner now seeks to place reliance were well within the knowledge of the petitioner and that there is nothing to indicate that the said documents could not be placed by the petitioner in spite of exercise of due diligence and cannot now be

allowed to be placed on record now.

6. On behalf of the petitioner it is submitted through the reply that has been submitted by the respondent as also indicated vide the impugned order, the respondent had submitted that in case any new fact or document is placed on record the respondent be entitled to assail the same by filing his additional affidavit and thus no prejudice would be caused to the respondent if the prayer made by the petitioner is allowed.

7. On a consideration of the submissions made on behalf of either side and on a perusal of the record, taking into account the factum that the site plan had already been placed on record by the petitioner previously and that the petitioner seeks to bring forth the names of the tenants with tenanted premises, the prayer made by the petitioner seeking to place on record the site plans of the property in question is allowed as it is essential for the adjudication of the eviction petition.

8. The site plans filed by the petitioner/applicant along with the application under Order VII Rule 14 (3) r/w Section 151 CPC filed by the petitioner before the learned ARC, Pilot Court (Central) vide order dated 20.1.2018 are allowed to be taken on record.

9. As regards the prayer that has been made on behalf of the petitioner seeking to place on record the additional documents in relation to counter foils of rent receipts which are stated to be placed on record, the prayer is not allowed as apparently the said documents were well within the knowledge of the petitioner and there is nothing to indicate that they could not be produced by him at the appropriate

time in spite of exercise of due diligence in relation thereto.

With these observations the petition and the accompanying application are disposed of.

Copy of the order be sent to the learned ARC Pilot Court (Central).

ANU MALHOTRA, J

AUGUST 09, 2018/sv