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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 738/2018**

RAM KUMAR JAIN Petitioner
Through: **Mr.Shiv Charan Garg, Advocate**

versus

SAVITRI DEVI Respondent
Through:

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **09.07.2018**
CM No.26487/2018 (Exemption)

Exemption allowed, subject to just exceptions.

CM(M) 738/2018

Vide the present petition, the petitioner assails the impugned order dated 2.5.2018 of the learned Trial Court of the Senior Civil Judge, Rohini Courts in CS No. 537557/2016 whereby an application under Order 6 Rule 2 under Section 151 CPC filed on behalf of the defendant, i.e., the petitioners herein, submitting to the effect that the evidence of the PW-2 and PW-3 would not be considered as the same was led beyond the pleadings and a question of law had been raised by the learned counsel for the defendant in para 3 of the affidavit of evidence of PW-2 and the plaintiff could not be allowed to depose in the evidence, was disposed of by the learned Trial Court observing to the effect that the application cannot be considered as the defendant has an opportunity to raise the plea at the time of final arguments as

PW2 has already been examined in chief and partly cross-examined and PW-3 examined in chief and his cross-examination was deferred and the case was at the stage of trial.

Inter alia, reliance has been placed on behalf of the defendant, i.e., the petitioner herein on the following verdicts of the Apex Court:

- ***Bhagwati Prasad v Chandramaul*; 1966 SIR(SC) 735**
- ***Ram Sarup Gupta (Dead) by LRs v. Bishun Narain Inter College & Ors.* ; Manu/SC/0043/1987 and**
- ***Bachhaj Nahar vs. Nilima Mandal & Ors.*; IX (2008) SLT 422**

to contend that evidence cannot be led beyond the pleading and in the absence of pleading, evidence, if any, produced by the parties cannot be considered and that no party should be permitted to travel beyond its pleadings and that all necessary and material facts should be pleaded by the party in support of the case set up by it.

In as much as these aspects should have and also have essentially to be considered by the learned Trial Court, with this observation, it is held that there is no ground for proceeding further qua the impugned order and the petition is disposed of in these terms.

A copy of this order be sent to the learned Trial Court.

ANU MALHOTRA, J

JULY 09, 2018/SV