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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **CM(M) 773/2018 & CM APPL. 27371/2018**

**HARISH ARNEJA** ..... Petitioner  
Through: Mr. Shiv Charan Garg, Adv.

versus

**VEER BALA (DECEASED) THR HER LRS** ..... Respondent  
Through: None.

**CORAM:**  
**HON'BLE MS. JUSTICE ANU MALHOTRA**

**ORDER**

% **13.07.2018**  
**CM APPL. 27371/2018 (Exemption)**

Exemption allowed, subject to just exceptions.

**CM(M) 773/2018**

Vide the present petition, the petitioner who is arrayed as defendant no.10 to CS(OS) No.1933/2003 pending in the Court of the ADJ-10 (Central), assails the impugned order dated 19.04.2018 whereby an application filed on behalf of the defendant nos. 9-12 for placing on record additional documents was disallowed observing to the effect that no reason had been mentioned as to what prevented the defendant nos.9-12 including the present applicant/petitioner to submit the documents sought to be filed now, earlier and that the documents cannot be filed now and that the last opportunity had been granted to the defendant nos.9-12 vide order dated 12.08.2011 and that vide the impugned order dated 19.04.2018, the matter was fixed for defendant evidence on 10.05.2018 as the last and final

opportunity and it is submitted by the learned counsel for the petitioner that the matter is fixed for 27.07.2018 before the learned trial Court for recording of evidence of defendant no.10.

During the course of submissions that have been made on behalf of the petitioner reliance is sought to be placed on the testimony of DW-10 examined in the instant case in which a suggestion is indicated to have been given to DW-10 in cross examination which was responded to the effect that:

*“It is incorrect to suggest that we never occupied or stayed in the suit property.”*

Wherein the defendant no.10 i.e. present petitioner denied that they had never occupied or stayed in the suit property. On behalf of the applicant/petitioner it is submitted that the documents that are sought to be produced relate to possession by the defendant no.10 in the suit premises.

It is essential to observe that the plaint that has been filed before the learned trial Court i.e. CS(OS) 1933/2003 is a plaint in a suit for declaration and for mandatory injunction for ejection and recovery of vacant possession and for damages and other reliefs against the defendants and that vide clause 18 (6) it has categorically been stated to the effect that :

*“All the defendant nos.1 to 12 were never in lawful possession of the property and are liable to quit, vacant and deliver the vacant and peaceful possession of the property to the plaintiff. They are illegal occupiers and their possession is that of trespassers and they are not entitled to hold, occupy and possess any portion of the property for any reasons whatsoever.”*

indicating thereby that the plaintiff has admitted the possession of the defendant no.10 in the suit property but to the extent as stated by the plaintiff that the defendant nos. defendant nos.1 to 12 were never in lawful possession of the property and are liable to quit, vacant and deliver the vacant and peaceful possession of the property to the plaintiff and that the defendant nos.1 to 12 were illegal occupiers and their possession is that of trespassers and they are not entitled to hold, occupy and possess any portion of the property for any reasons whatsoever. In view of the averments made vide para-18 (6) of the plaint, it is apparent that the plaintiff has stated there that the defendant nos.1 to 12 were in a possession of the property in question though as per averments made by the plaintiff through the said suit they were stated to have never occupied in lawful possession of the property.

In the circumstances, it is apparent that there is no infirmity in the impugned order which does not permit placing on record the additional documents without any specific explanation having been given in relation to place them on the record. Rather as observed hereinabove, the plaintiff seeks an ejectment *inter alia* of the defendant nos.10 to 12 from the suit property.

In view thereof there is no merit in the prayer made by the petitioner.

The petition CM(M) 773/2018 is declined.

Nothing stated hereinabove shall amount to an expression on the merits or demerits of the case.

Copy of this order be sent to learned trial Court.

**ANU MALHOTRA, J**

**JULY 13, 2018/vm**