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

+ CM(M) 361/2017 and CM APPL.12695/2017 (stay)

SUDHIR RANA & ANR Petitioners

Through: Mr. V.P. Rana, Advocate with
Ms. Pooja, Adv.

versus

RAMPAL TYAGI Respondent

Through: Mr. D.S. Pawariya, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **02.04.2018**

File is taken up today as 27.03.2018 was declared a holiday followed by Court holidays till yesterday.

The petitioners are the plaintiffs in the civil suit (CS No.576/2016) instituted on 16.11.2015 seeking reliefs in the nature of decree of specific performance of contract and permanent injunction and in the alternative for recovery of Rs.62 lacs, out of which Rs.20 lacs were paid as earnest money and the balance invested in the property, along with interest *pendente lite* and future. The suit is being contested by the respondent (defendant). The pleadings having been completed, the trial court had proceeded to frame issues on 18.05.2016. As per order passed on the said date, the petitioners were obliged to submit list of witnesses along with original documents within one month. It is confirmed from the record that list of witnesses in compliance was submitted on 10.06.2015, the said list indicating the names of fourteen witnesses they including both the petitioners as the first

witnesses, there being a request for four other individuals to be examined besides a draftsman and remaining official witnesses to be summoned.

The trial Judge by her order dated 18.05.2016 had fixed the matter for entire evidence of the plaintiffs to be adduced on 06.03.2017 with further direction that affidavit of evidence to be filed by the plaintiffs by 01.02.2017 with advance copy to the counsel for the defendant. Concededly, the affidavit of evidence was not filed on record nor copies supplied within time specified by the court to the opposite counsel. On 06.03.2017, noticeably, there was no appearance on behalf of the defendant. The counsel closed the evidence of the plaintiffs observing that the defendant had abandoned the proceedings and fixed the matter for final arguments. The petitioner thereafter moved an application under Section 151 of Code of Civil Procedure, 1908 (CPC) seeking recall of the said order dated 06.03.2017 and in that context explanation was offered that the first plaintiff Sudhir Rana was paralytic on which account the affidavit could not be filed in time. Request was also made for appointment of the court commissioner for recording of evidence. While conceding to the said prayer, the trial Judge permitted re-opening of the plaintiffs evidence but then restricted it to the evidence of the plaintiffs alone. Aggrieved by the said order the present petition has been filed.

After some hearing, the counsel for the respondent fairly conceded to the prayer for re-opening of the opportunity for plaintiffs evidence to be granted but his request is that instead of official witnesses to be summoned, the plaintiffs may be called upon to submit certified copies of the record which are sought to be proved through the official witnesses.

In above view, the petition is allowed. The impugned order to the extent thereby the right of the plaintiffs to lead evidence other than their own testimony was closed are set aside. The trial Judge will give effective opportunity by fixing appropriate dates on which the evidence is to be adduced. It will have to be remembered that, given the volume of evidence intended to be adduced, it would not be feasible to record entire evidence in one date of hearing only. At the same time, the suggestion of the respondent counsel seems to be fair. If the proceedings in the trial can be curtailed by submission of the certified copies of such documents as can be obtained, the petitioners must take recourse to such procedure and tender the certified copies in the evidence. Of course, in the event of such evidence being contested, the plaintiffs will have to be given opportunity to prove the said documents by summoning the relevant records. Ordered accordingly.

The petition and the application stand disposed of in above terms.

Dasti.

R.K.GAUBA, J.

APRIL 02, 2018

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