

\$~19

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 731/2018 & CM APPL. 26235-37/2018**

SATISH CHANDRA SANWALKA & ORS Petitioners
Through **Mr. B.K. Sood, Adv.**

versus

M/S TINPLATE DEALERS ASSOCIATES PVT LTD & ORS
..... Respondents
Through **None.**

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **06.07.2018**

CM APPL. 26237/2018 (Ex.)

Exemption allowed subject to all just exceptions.

The application is disposed of.

CM(M) 731/2018

The petitioner assails the impugned order dated 24.05.2018 whereby an application under Order VIII Rule I (A) of the CPC, 1908, as amended filed by the defendant no. 1- Company seeking to place on record the Articles of Association of the plaintiff company has been allowed to the extent that the said document was taken on record with it having been specifically directed that the same would however be subject to proof during defendant evidence. The impugned order itself indicates that the matter is fixed for defence evidence for the date 10.07.2018.

It has been submitted on behalf of the petitioner that the

petitioner would be put to grave prejudice inasmuch as there is an attempt to bring on record defence evidence repeatedly despite the order dated 25.05.2017 of the trial Court, vide which the previous application filed by the defendant no.1, defendant no.2, defendant no.3 & defendant no.6 seeking to bring on record further evidence was disposed of with directions that no further opportunity would be granted to lead defendant evidence with the defendant having been directed to file the advance copy of affidavit of the witnesses who were to be examined within a period of four weeks with an advance copy to the other side failing which it was directed that the defendant would be burdened with costs of Rs.5,000/-.

The proceedings of the date 14.12.2017 before the learned ADJ-01, Central in CS No. 10699/16 indicate that the document allowed to be brought on record vide order dated 24.05.2018, i.e., the impugned order, had been sought to be proved during the course of the proceedings dated 14.12.2017, i.e., the Articles of Association, qua which it was submitted that the same could not be proved during the testimony of DW-1 and had been marked and that qua which it has been observed vide order dated 14.12.2017 of the Trial Court that the same may be proved in the testimony of subsequent witnesses by moving an appropriate application in this regard for summoning relevant witnesses and on seeking leave for the said purpose. Vide the said order dated 14.12.2017 also, it was directed that the defendant was directed to file the advance copies of affidavit of the witnesses who were to be examined within a period of four weeks with an advance copy to the other side, failing which it was directed

that the defendant would be burdened with costs of Rs.5,000/- on taking of steps.

A bare perusal of the proceedings of the Trial Court as placed on the record indicate that, it has been observed vide the impugned order dated 24.05.2018 itself that the evidence of the defendant has not yet been completed that the document sought to be filed by the defendant is a document allegedly relied upon by the plaintiff themselves in Company Petition no.29/1996 before the Company Law Board and in the impugned order itself dated 24.05.2018, it has been observed to the effect that though the application has been allowed and the document taken on record, the same is however subject to proof during the defendant's evidence.

Apparently the proof of the said document has to be made in accordance with law in terms of proceedings dated 14.12.2017 by summoning of the relevant witnesses and seeking leave of the Trial Court for the said purpose. The order dated 24.05.2018 is thus to be read with the proceedings dated 14.12.2017.

The petition is disposed of accordingly.

Copy of this order be sent to the learned Trial Court.

ANU MALHOTRA, J

JULY 06, 2018
NC