

\$~8

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

Decided on: 21st February, 2018

+ CM(M) 694/2016 and CM 25682/2016, 32168/2016 and 4989/2017

SHIV KUMAR SHARMA Petitioner

Through: Mr. Ajay Kumar Porwal, Adv.

versus

M/S PHOOL CHAND OM PRAKASH Respondent

Through: Mr. Shakeel Sarwar Wani and Mr.
Himanshu Garg, Advocates

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner is the first defendant in the civil suit (CS 122/2016) instituted by the respondent in 2011 seeking recovery of Rs.16,80,705/- it statedly being the amount which was outstanding and not paid by him for the goods purchased from the plaintiff over a certain period. It appears that while contesting the suit, the petitioner (first defendant) has also submitted with his written statement a counter claim for recovery of Rs.15,34,383/- statedly the amount of “over payment”. The suit concededly had reached the stage of final adjudication when the plaintiff moved an application under Order XVIII Rule 17 and under Order VII Rule 14(3) of the Code of Civil

Procedure, 1908 (CPC) seeking liberty to place on record and adduce as additional evidence three documents, they being copy of the certificate of registration (Form 8), statement of accounts for April 2006 to February 2016 and income tax returns for the period 2007-2008 to 2015-2016. The trial judge considered the said applications and allowed the same by order dated 06.04.2016 which is assailed by the petition at hand, reliance being placed on *Bagai Construction Vs. Gupta Building Material Store*, (2013) 14 SCC 1 and *Ram Rati Vs. Mange Ram (D) through Lrs and Ors.*, JT 2016 (3) SC 477.

2. Having heard the learned counsel on both sides and having gone through the record, this court finds the challenge to the impugned order being misconceived. There is no absolute rule that a party having once adduced evidence cannot be permitted thereafter to bring on record any additional evidence. It has to be borne in mind that in the proceedings before the trial court, the issues arise not only from the claim made in the suit by the plaintiff but also the counter claim raised by the defendant. It is clear that evidence with regard to the counter claim would have come on record after the plaintiff had led evidence to discharge its onus of proof. The learned trial judge has accepted the prayer for additional evidence to be allowed exercising the judicial discretion vested in him. There is nothing before this court from which it could be concluded that such judicial discretion was exercised illegally or with material irregularity. Each case has its own peculiarities and the cases cited at bar are distinguishable on facts.

3. There being no just or sufficient reason for this court to interfere in the exercise of judicial discretion by the trial judge, the petition and the applications filed therewith are dismissed.

R.K.GAUBA, J.

FEBRUARY 21, 2018

yg

