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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Order: 14.11.2018

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CM(M) 1134/2018 & CM 38625-38626/2018

KANSHI NATH & ORS

..... Petitioners

Through: Mr. Hirein Sharma, Adv.

versus

M/S NATIONAL TRADING CORPORATION & ORS

..... Respondents

Through: Mr. Shiv Charan Garg, Adv. for
R1 & R2.

Mr. O.P. Saxena, Mr. R.V.
Alagh, Mr. Vinod Jain, Adv.
for R3.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

ORDER

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14.11.2018

CM No.38626/2018 (delay in re-filing)

1. For the justifiable reason explained in the application, the delay in refiling the petition is condoned.
2. The application stands disposed of.

CM(M) 1134/2018 & CM 38625/2018 (stay)

3. The impugned order dated 27.04.2018 passed by the Court of Learned Civil Judge-03, Central District, Tis Hazari Courts,

Delhi ('trial court') is the subject matter of challenge in this petition filed under Article 227 of the Constitution of India.

4. The respondents No.1 and 2/plaintiffs filed a suit for permanent injunction against the petitioner/defendants No.2 to 5 and respondent No.3/defendant No.6 in respect of suit property No. 6926/150, Jaipuria Mills, Ghanta Ghar, Subzi Mandi, Delhi-110007 praying for passing a decree for permanent injunction in their favour against the defendants thereby restraining them from raising construction or encroaching upon their common passage and a decree of mandatory injunction directing the defendants to remove the said unauthorised and illegal wall which was constructed in common passage.
5. At the stage of their evidence, the petitioners/defendants No.2 to 5 moved an application on 27.04.2018 to summon three witnesses i.e. (i) Ajay Kumar Jain, AR of respondent No.3/defendant No.6, (ii) Sh. Sanjeev Kumar, erstwhile representative of respondent No.3/defendant No.6 and SHO, PS Roop Nagar. By the impugned order, learned Civil judge-03 has declined the request of the petitioner to summon Sh. Ajay Kumar Jain, AR of respondent No.3/defendant No.6 for the reason that the dispute is as to whether the defendants are in exclusive possession of the portion of the property as shown with red and yellow colour in the site plan (Ex.PW1/3) or as to whether this portion was to be used commonly by the parties,

and therefore, summoning of AR of respondent No.3/defendant No.6 would not serve any purpose.

6. The petitioner moved application dated 27.04.2018 to summon the AR of the defendant No.6 to produce the following documents:-

“(i) Rent Agreement, if any, executed between the defendant No.6 and father of defendant No.2 to 5.

(ii) Rent agreement, if any, executed between defendant No.6 and plaintiff.

(iii) Rent receipt of plaintiff and defendant No.2 to 5 from inception of tenancy and

(iv) Site plan of property bearing No.149, 150 and 151 under the tenancy of plaintiff and under the tenancy of father of defendant No.2 to defendant No.5.”

7. In his cross-examination, the petitioner No.1 (DW2) admitted that no document was executed by defendant No.6 in his favour or in favour of his predecessor (father). So, there is an admission by the petitioner No.1 and when no agreement was executed, it strange why rent agreement is sought to be summoned from AR of defendant no.6. So far as the agreement executed by defendant No.6 and plaintiff is concerned, Sh. Naresh Kumar Gupta, Attorney Holder of the plaintiff has appeared as PW1 and placed on record two rent receipts (Ex.PW1/4 collectively) in relation to the premises in question. No effort was made by the petitioner to elicit any information in the cross-examination of PW1, if there was any rent agreement

executed between the plaintiff/respondent No.1 and defendant No.6/respondent No.3. As far as the rent receipts in favour of the plaintiff are concerned, two rent receipts (Ex.PW1/4) are already on record. If there are rent receipts in favour of petitioners/defendants No.2 to 5, they are the better person to place on record the same. The site plan (Ex.PW1/3) of the property in question has already been placed on record by the respondents No.1 and 2/plaintiffs and the PW1 was duly cross-examined.

8. In the circumstances, the learned Civil Judge have passed the order perfectly in accordance with law in declining the request of the petitioner to summon the AR of defendant No.6.
9. In view of the above, the petition along with application being CM 38625/2018 is dismissed.

NOVEMBER 14, 2018

‘sandeep’

VINOD GOEL, J.