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

+ CM(M) 1071/2014 and CM APPL.20022/2014 (stay)

NARINDRA ARORA

..... Petitioner

Through: Mr. Rahul Sharma, Adv. with
Ms. Jyoti Dutt Sharma, Adv. &
Mr. C.K. Bhatt, Adv.

versus

M/S. APEX APARTMENTS PVT LTD & ORS. Respondents

Through: Mr. Arun Vohra, Adv. with Mr. Dilip
Kumar & Mr. Pranay Mehta, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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11.05.2018

The proceedings in the civil suit (CS No.76/2014), initially filed in 1997 on the original side of this court by the petitioner have been held up now for almost eight years because of the controversy surrounding the filing or non-filing of the three postal envelopes by the plaintiff, the said postal envelopes, as per the case of the petitioner (plaintiff) having been used to send the legal notice on which reliance was placed. It appears after the plaintiff's evidence had been concluded and at the stage of defendant's evidence objection was taken regarding presence of the said three envelopes on record under the cover of undated list of documents (apparently at page 565 of the trial court record at that stage), upon consideration of which the trial court by its order dated 13.11.2010 directed the said three envelopes to be "*taken off the record*". The said order was sought to be assailed by the petitioner through CM(M) 604/2012, which was, however, allowed to be

withdrawn with liberty, as prayed, granted to the petitioner to move an appropriate application for taking on record said envelopes, in accordance with law.

Against the said backdrop, the petitioner filed an application labelling it under Order VIII Rule 14 of the Code of Civil Procedure, 1908 (CPC) treated by the trial court as an application under Order VII Rule 14 CPC. The application, however, was dismissed by order dated 06.05.2014. The order dated 06.05.2014 having been challenged by the petition at hand, to the extent thereby afore-mentioned prayer for bringing on record three envelopes was rejected, the learned Single Judge then in *seisin* of the matter recorded the following observations in proceedings dated 18.12.2014:-

“... 2. The present petition under Article 227 of the Constitution of India impugns the order of the trial court dated 6.5.2014 by which certain documents being three registered post envelopes were taken off the record by the trial court. Learned counsel for the petitioner argues that CPC is handmaid of justice and once the documents were already on record, at best it was an issue of extension of time more so because original of these documents were already existing on record. It is also argued that no serious prejudice will be caused by allowing the petitioner/plaintiff to get these unimpeachable documents being registered post envelopes proved, not only because the authenticity of the documents is beyond question, but also because only one witness of the defendant being DW-1 had been examined at the stage when the impugned order dated 6.5.2014 was passed. It is also argued that petitioner/plaintiff will offer costs of Rs.20,000/- to the respondents/defendants for the delay in seeking the documents to be placed on record and proved in accordance with law.

3. In view of the arguments urged on behalf of the petitioner, let the costs of Rs.20,000/- be offered to the respondents/defendants within four weeks from today in the trial court alongwith an application, and once these costs are accepted, trial court will allow the petitioner/plaintiff to place on record the three envelopes and the petitioner/plaintiff can prove the same in accordance with law on a date to be fixed by the trial court. In case, the respondents/defendants do not accept the costs of Rs.20,000/-, then, in such a case notices will be issued in this petition within a period of six weeks from today, and if costs are not accepted, proceedings before the trial court in suit no.76/2014 titled as Narindra Arora Vs. M/s Apex Apartments Pvt. Ltd. and Ors. pending before the court of Sh. Raj Kumar, ADJ-17, Central, Tis Hazari Courts, Delhi, will remain stayed till further orders unless varied by the Court....”

It is clear from the proceedings that the respondents (defendants in the suit) were not agreeable to let go their objections only on costs of Rs.20,000/- which had been tendered. The matter has remained pending for the last four years.

In the course of hearing, the learned counsel for the respondent fairly conceded that the aforementioned three envelopes may be allowed to be brought on record and the petitioner (as the plaintiff) may be permitted to one opportunity to examine himself (as the plaintiff of the case) to prove the said documents, as is the limited prayer now pressed, it having been clarified that he would not pray for any opportunity to amend the plaint so as to bring any further averments with regard to the envelopes. The counsel for the respondent, at the same time, submitted that the plaintiff's attorney Smt. Charita Arora, who was earlier examined as PW-1 may be called again so

that the respondents (defendants) have the opportunity to further question her to bring on record their version vis-a-vis these documents and further that in light of this fresh evidence being brought on record, respondents reserve their right to lead additional evidence on the subject.

The counsel for the petitioner agrees to the requests as above made by the respondents and both sides agree that the petition may be disposed of accordingly.

In above view, the prayer of the petitioner to bring back on record the three postal envelopes referred to above and tender them during the deposition of the petitioner (plaintiff) is granted subject to costs of Rs.30,000/- to be paid on the next date of hearing before the trial court. Before examining himself pursuant to the said opportunity, however, the petitioner will be obliged to tender PW-1 Smt. Charita Arora for further cross-examination by the respondents (defendants). The respondents undoubtedly will have the right to bring such further evidence as may be deemed proper and necessary by them in light of the further evidence that would come on record, pursuant to the above mentioned liberty granted to the plaintiff of the case, this including by filing of additional affidavit of the defendants' witnesses.

The petition and the applications filed therewith stand disposed of with these observations.

R.K.GAUBA, J.

MAY 11, 2018

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