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

+ **CM(M) 1009/2018**
SWARAN SINGH

..... Petitioner

Through: Mr Manav Gupta, Ms Prabhsahay
Kaur, Ms Esha Dutta and Mr Sahil
Garg, Advocates.

versus

SURINDER KUMAR & ORS

..... Respondents

Through : Mr Saurabh Kirpal and Ms Jyoti
Mendiratta, Advocates.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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29.08.2018

Cav. 778/2018

Since learned counsel for the respondents/caveators are present
and even heard, the caveat stands discharged.

CM No.35103/2018(exemption)

Exemption allowed subject to all just exceptions.

The application is disposed of.

CM(M) 1009/2018 & CM No.35102/2018(stay)

1. Arguments have been addressed on behalf of either side.

2. Vide the present petition, the petitioner assails the impugned order dated 20.07.2018 of the learned Additional District Judge (ADJ-05/South), Saket Courts in CS No.7179/2016 vide which an application under Order XVIII Rule 17 CPC filed by the plaintiff, i.e. the petitioner herein seeks recalling of the defendant's witness, i.e. DW1 – Shri Sukhdev Kumar Singla for further cross-examination was declined, with it having been observed vide paragraph 18 of the said impugned order to the effect that the plaintiff had specifically stated that he wanted to lead evidence with respect to adequate and reasonable compensation for which it needed to be ascertained what was the complete amount paid by the plaintiff and that as per his own case, the plaintiff has to pay a sum of Rs.28 lacs and that there was no justification why the plaintiff was to be allowed to recall DW-1 for further cross-examination to prove that he had paid Rs.1.89 crores under the garb of discrediting the veracity of DW-1.

3. The suit filed by the plaintiff, i.e. the petitioner herein, pending in the Court of the ADJ-05/South, Saket Courts, is one for specific performance on the basis of a Receipt – cum-Agreements dated 16.06.1993, 11.12.1993 and 11.01.1995, contending to the effect that the defendants, i.e. the respondents herein, had agreed to sell the agricultural land, detailed in the plaint, to the plaintiff for a consideration of Rs.29,25,000/-, and that the plaintiff was in possession of the said land from the dates of the execution of the receipt in relation to the said payments but that the defendants, the respondents herein, had refused to their demand for

execution of the sale deed and thus the plaintiff to the plaint prayed for a decree for specific performance in his favour and against the defendants directing the execution of the sale deed for the property in question in terms of the Agreement executed between the parties, as alleged.

4. During the course of submissions that have been made on behalf of either side, it has been brought forth that an application under Order VI Rule 17 CPC was filed by the plaintiff on 04.04.2000 for amendment of the plaint vide which apart from the modification in the date of the execution of the Agreement, the plaintiff had sought to say that in place of the sum of Rs.29.25 lakhs, the plaintiff had in fact paid a sum of Rs.1,89,94,791/- and the plaintiff sought an addition of paragraph 8(a) & 8(b) to the plaint, qua which the said application was allowed vide order dated 24.01.2008 in CS(OS) No.166/1997 as the suit was then numbered before transfer of the same to the District Courts on the ground of pecuniary jurisdiction, which order dated 24.01.2008, on being assailed by the defendants, i.e. the respondents to the present petition, in FAO(OS) No.103/2008 of the Hon'ble Division Bench of this Court was set aside, with it having been observed to the effect that there had been suppression of the material, particularly in the suit filed by the plaintiff, i.e. the present petitioner and the application for amendment has been filed three years after the suit and that the application for amendment was an abuse of the process of law and could not have been granted and that the said

amendments which had been sought by the plaintiff, i.e. the petitioner herein were not of a minor nature and that the plaintiff had sought to fundamentally alter the very basis of the suit. The said order dated 21.05.2008 of the Hon'ble Division Bench of this Court in FAO(OS) No.103/2008 was upheld vide order dated 25.08.2008 of the Hon'ble Supreme Court in Special Leave Appeal (Civil) No.20093/2008, whereby the said SLP filed by the plaintiff, i.e. the petitioner herein, against the order dated 21.05.2008 in FAO(OS) No.103/2008 was dismissed.

5. During the course of submissions that have been made on behalf of either side, it has been also brought forthwith that during the course of evidence led by the plaintiff Ex.PW-1/A (document) sought to be exhibited by the plaintiff on 29.08.2012 vide paragraphs 5 & 8 of his affidavit in his testimony were sought to be not read in evidence and documents referred to in paragraph 8 of the affidavit as Ex.PW-1/2 to Ex.PW1/13 and Ex.PW1/17 to PW-1/22 were thus directed to be de-exhibited.

6. Vide order dated 24.04.2014 of this Court in CS(OS) 166/1997, an application filed by the plaintiff, i.e. the petitioner herein, seeking exhibition of the very same documents Ex.PW-1/2 to Ex.PW1/13 and Ex.PW1/17 to PW-1/22 which were de-exhibited in the examination-in-chief of PW-1, was declined by this Court observing, *inter alia*, to the effect that the original plaint remained as it is, i.e. wherein the plaintiff had alleged that the deal was struck off for Rs.29,25,000/- and the entire amount was paid and possession was

handed over and it was for the plaintiff to prove the facts pleaded in the plaint those were necessary for corroboration and that the exhibition of the documents sought to be exhibited was not relevant. The said order dated 24.04.2014 of this Court in CS(OS) No.166/1997, i.e. the number of the suit as it was in this Court, was assailed in FAO(OS) No.227/104 and vide order dated 07.05.2014 of the Hon'ble Division Bench of this Court, the Appeal against the same was dismissed which it further having been held that if the judgment/decreed held against the appellant/plaintiff, i.e. the present petitioner, it would be open to the plaintiff, i.e. the present petitioner to challenge the order dated 24.04.2014 in an Appeal. The order dated 07.05.2014 in FAO(OS) No.227/2014 of the Hon'ble Division Bench of this Court was upheld vide order dated 12.09.2014 of the Hon'ble Supreme Court in Special Leave to Appeal (C) No.22714/2014.

7. As already observed elsewhere hereinabove, vide paragraph 19 of the impugned order dated 20.07.2018, it has been specifically observed by the learned Trial Court that the plaintiff cannot be allowed to prove that he had paid a sum of Rs.1,89,94,791/- in place of Rs.29.25 lakhs, that had been paid by the plaintiff for the property in question, in view of the factum that the production of the exhibition of the documents, i.e. the receipts which were earlier de-exhibited on the request of the petitioner himself were not allowed to be exhibited vide order dated 24.04.2014.

8. It has been submitted on behalf of the petitioner that the appeal

against the same being dismissed by the Hon'ble Division Bench of this Court in FAO(OS)227/2014 on 07.05.2014 and the SLP against the same having been dismissed by the Hon'ble Supreme Court on 12.09.2014 in the Special Leave to Appeal (C) No. 22714/2014 cannot operate as an embargo for the petitioner herein to confront the defendant's witnesses for the reason that there has been recasting of the issues framed in the suit while reframing of the issues framed in the suit vide order dated 20.02.2018 of this Court in Criminal Revision Petition No.31/2018, whereby the issues which had been framed on 19.11.2008 as issues No.1 and 6 which read to the effect-

“1. Whether the agreement of the year 1993 between the parties was as set out in the plaint dated 25th January, 1997 or as pleaded by the defendants? OPPr.

6. Whether the Agreement of the year 1993 stood novated? OPD.”

These issues had been reframed and now read as under:-

“1(a) Whether the agreements between the parties was as set out in the plaint, i.e. dated 16.06.1993, 11.12.1993 and 11.01.1995 for a total sale consideration of Rs.29,25,000/-? OPP.

1(b) Whether the agreements between the parties was as set out in the written statement i.e. dated 15.03.1993 and 15.04.1993, for a total sale consideration of Rs.1,89,94,791/- and the defendants had only received a sum of Rs.31.25 lakhs? OPD.

6. Whether the agreement consisting of the receipt-cum-agreement dated 15.03.1993 and the agreement dated 15.04.1993 stood novated in the year 1995, plaintiff having paid an amount of Rs.17 lakhs at that stage? OPD.

9. It has been submitted further that though the plaintiff, i.e. the petitioner herein, may not be, as has not been so allowed by the impugned order, permitted to lead evidence in relation to the payment of sum of Rs.1,89,94,791/-, qua the issue No.1 as reframed on 20.02.2018, nevertheless is entitled to cross-examine the defendant qua issue No.1(b) by production of these very de-exhibited documents not allowed to be exhibited in relation to the onus led on the defendant in issue No.1(b) that the defendant had only received sum of Rs.31.25 lakhs to disprove the same by production of the documents to bring forthwith that he had paid a sum of Rs.1,89,94,791/- .

10. It has been submitted on behalf of the plaintiff that the same is permissible in terms of Order VII Rule 14 CPC, specifically sub-clause (4), which provides that nothing in the Rule would apply to the documents produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to referesh his memory.

11. It is submitted on behalf of the petitioner that in view of the verdict of the Hon'ble Supreme Court in *Salem Advocates Bar Association in Tamil Nadu versus Union of India*, AIR 2005 SC 3353, the words "**plaintiff's witnesses**" would be read as "**defendant's witnesses**", it having been held to be a legislative error with directions of the Hon'ble Apex Court to read to the effect to avoid any confusion, it was directed that till the legislature corrects the mistake, the words "**plaintitt's witnesses**" would be read as

“defendant’s witnesses” in Order VII Rule 14 CPC and thus, it has been submitted on behalf of the plaintiff, i.e. the petitioner herein that the said documents can be allowed to be produced for cross-examination of the defendant’s witnesses to disprove the claim of the defendant qua receipt of the sum of Rs.31.25 lakhs, as claimed by the defendant.

12. Taking into account the factum that the production of the said documents, exhibition thereof and the pleadings in relation thereto have repeatedly been declined vide orders dated 21.05.2018 in FAO(OS) No.103/2008 of this Court, so upheld vide order dated 21.05.20008 of the Hon’ble Supreme Court in Special Leave Appeal (Civil) No.20093/2008 and having been permitted to be brought on record ultimately through order dated 12.09.2014 in Special Leave to Appeal (C) No.22714/2014 arising out of order dated 07.05.2014 in FAO(OS) No.227/104 of this Court which arose out of the order dated 24.04.2014 of this Court in the suit, it is apparent that the petitioner cannot now be permitted to produce such documents which he seeks to rely upon for the purposes of the cross-examination also of the defendant’s witnesses as per Annexure 14 (Colly), as annexed to the present petition.

13. The petition and accompanying application are declined.

14. Learned counsel for the petitioner seeks to assail this order and is granted 15 days time for the same.

15. It is informed that the matter is listed before the learned Trial Court on 01st September, 2018 for final arguments and in the event of

this order of this Court being not set aside, the matter be taken up by the learned Trial Court for final hearing on 01st October, 2018.

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

ANU MALHOTRA, J

AUGUST 29, 2018

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