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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1032/2018 and CM No.35841/2018**

SANJAY ROY & ANR Petitioners
Through: Ms.Ritika Mitra, Advocate

versus

SANDEEP SONI & ORS Respondents
Through: Mr.Rakesh Saini, Advocate

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **18.09.2018**

Vide the present petition, the petitioner assails the impugned order dated 20.7.2018 of the learned Trial Court of the Civil Judge (South-East) in CS No.52736/2016 vide which an application filed on behalf of the petitioner seeking review of order dated 26.3.2018 of the learned Trial Court was declined.

Vide the order dated 26.3.2018, an application filed on behalf of the defendant No.1 arrayed as respondent No.1 to the present petition, seeking amendment of a previously moved application under Order 39 Rule 4 of the CPC was allowed in terms of Section 141 of the Code of Civil Procedure, 1908, observing *inter alia* to the effect that the provisions of Section 141 CPC, 1908, *mutatis mutandis* apply to the miscellaneous proceedings of the civil jurisdiction in terms thereof and for the procedure prescribed for suits and the applications filed by the respondent No.1 thus seeking amendment of the

application under Order XXXIX Rule 4 of the CPC was allowed subject to payment of costs.

Another application filed on behalf of the respondent No.1 seeking to place on record additional documents was also allowed subject to imposition of the costs in view of the factum that the said documents were found mentioned in the written statement of the defendant No.1, i.e., respondent No.1 to the present petition. The impugned order dated 20.7.2018 takes into account the proceedings dated 26.3.2018 and has declined the application filed by the petitioner seeking review thereof.

It has been submitted on behalf of the petitioner by the learned counsel that the invocation of Section 141 CPC in the facts and circumstances of the instant case cannot be allowed in as much as Section 14 CPC can apply only to the original institution of any proceedings like suit or probate petition and cannot apply to any other miscellaneous application “ Section 141 of the CPC reads to the effect:

Section 141: Miscellaneous proceedings.—
The procedure provided in this Code in regard to suit shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.
[Explanation .— In this section, the expression “proceedings” includes proceeding under Order IX, but does not include any proceeding under article 226 of the Constitution.]

Section 141 CPC specifically provides that the procedure under the CPC, 1908 in regard to the suit shall be followed and can be made

applicable in all proceedings in any Court of the civil jurisdiction and the “*Explanation*” specifies what are the proceedings which are not included in terms of Section 141 CPC which explanation refers to the aspect that the expression “proceedings” named in Section 141 CPC would include proceedings under Order IX but does not include any proceedings under Article 226.

Taking into account the factum that the scope and ambit of Section 141 Code of Civil Procedure, 1908, is delineated in Section 141 of the CPC itself, the contention raised on behalf of the petitioner that it cannot include in it any subsequent application seeking an amendment of another application other than the original institution of a suit or probate matter cannot be accepted.

The observation of the learned Trial Court qua the aspect of having permitted the additional documents on the record in view of the documents having already been referred to in the written statement of the defendant No.1 also negate the grant of the other prayer made by the petitioner.

In view thereof the petition and the accompanying applications are declined.

Copy of the order be given Dasti, as prayed.

ANU MALHOTRA, J

SEPTEMBER 18, 2018/SV