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

+ **FAO(OS) 143/2018**

HARKIRAT SINGH SODHI

..... Appellant

Through: Mr. Kirti Uppal, Sr. Adv. with
Mr. Lalit Gupta and Mr. Siddharth
Arora, Advs. with appellant in person.

versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Vek Prakash Sharma, Ms. Amrit
Kaur Oberoi, Mr. manish Kumar
Saryal and Ms. Adha Sharma, Advs.
Mr. Vatsal Kumar, Adv. for R5 and
R6.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **05.10.2018**

1. The present Appeal has been filed by the appellant challenging the order dated 8th August, 2018 passed by the learned Single Judge in OA No. 50/2018, which was a Chamber Appeal filed by the appellant herein against the order dated 6th April, 2018 passed by the Joint Registrar dismissing the application of the appellant under Order VII Rule 14 CPC for placing on record necessary / relevant documents.
2. The facts as noted from the record are that the appellant has filed a

petition for grant of probate of a registered Will of his mother namely Smt. Surinder Kaur Sodhi dated January 13, 1987. Respondent no.2 before the learned Single Judge who is the sister of the appellant has also filed a TEST CASE being 42/2014 titled as "*Amit Gandoak v. State & Ors.* whereby she has propounded an un-registered Will dated 7th September, 2004 of her mother namely Smt. Surinder Kaur Sodhi.

3. There is no dispute that the TEST. CASE 38/2014 has been consolidated with TEST CASE 42/2018. The appellant has filed an application under Order VII Rule 14 being IA No. 2162/2018 for bringing on record additional / necessary / relevant documents. The documents which he wishes to place on record are nine in number which included certain photographs. The said application was dismissed by the Joint Registrar vide the order dated 6th April, 2018, wherein the Joint Registrar has stated as under:

- (i) that the application is a third application filed by the appellant under Order VII Rule 14 CPC.
- (ii) the only reason given by the appellant for not filing the documents at an earlier stage of the Suit is on the ground that the documents were lying at Palace Cinema and were not easily accessible earlier and it is

only while preparing the defence in CS(OS) 90/2017, the appellant chanced upon the aforesaid documents. It is intriguing as to why the appellant never thought it fit to search the above documents at an earlier stage for the purpose of the present petition which was filed in the year 2014.

(iii) the fact that the appellant never searched for the aforesaid documents at an earlier stage as the same are stated to be not easily accessible does not mean that the said documents were not in power and possession of the appellant.

(iv) the filing of successive applications to place on record the documents only indicates an utter lack of due diligence on the part of the appellant.

(v) the photographs sought to be placed on record pertains to a later period and it is not the case of the appellant that such photographs have been found at Palace Cinema. The earlier applications have been allowed considering the fact that the documents were relevant and also keeping in view the judgment of the Supreme Court in the case of *Kapil Kumar Sharma v. Lalit Kumar Sharma* 2013 (14) SCC 612 inasmuch as the matter is still at the stage of appellant's evidence.

There is a complete lack of due diligence on the part of the appellant who has been in power and possession of the documents sought to be placed on record at all times.

4. In appeal the learned Single Judge in the impugned order has in Paras 8 and 9 given the following reasons while dismissing the appeal:

“8. It is manifest that the present application has been filed belatedly. In fact, it is the third application filed seeking the same relief. I agree with the reasoning given in the impugned order that there is lack of due diligence on the part of the petitioner.

9. That apart, most of the contentions which are sought to be raised by the petitioner lose their significance in view of the submissions of the learned counsel for the respondents, namely, that they do not challenge the signatures of the testator on the Will dated 13.01.1987. There are no grounds made out to grant leave to the petitioner to have the documents placed on record. I see no reason to interfere in the impugned order.”

5. Mr. Kirti Uppal, learned Sr. Counsel appearing for the appellant would reiterate the stand taken by the appellant before the learned Joint Registrar and the learned Single Judge. He states, the appellant is ready to give up the relief with regard to the placing of photographs on record. According to him, since the evidence has not started, no prejudice is going to be caused to the respondents if these documents are placed on record.

6. On the other hand, Mr. Ved Prakash Sharma, learned counsel

appearing for the respondent nos. 2 to 4 would submit that the present appeal filed by the appellant is not maintainable in view of Section 105 read with Order XLIII Rule 1 CPC, and also in view of the law laid down by the Coordinate Bench of this Court in the case of *Anil Kapoor v. S.R. Sharma Thr. LRs. FAO (OS) 269/2005* decided on 25th May, 2009. On merit, it is his submission that the attempt of the appellant is to delay the proceedings. He also states that the application, which was dismissed by the learned Joint Registrar, was third application for placing the documents / photographs on record, which the appellant, even though in possession, did not file earlier purposefully. According to him, it is expected, that the parties to a litigation shall file all the documents, which are in their possession at the time of filing of the Suit or the Written Statement.

7. Having heard the learned counsel for the parties, the issue which needs to be decided is whether the present appeal filed by the appellant is maintainable in view of the judgment of this Court in the case of *Anil Kapoor (supra)*. The said case was a Suit for Specific Performance of an Agreement to Sell in respect of property No. E-386, Greater Kailash-I, New Delhi. The respondents entered appearance and defended the Suit. On completion of pleadings, issues were framed on 15th September, 1998. At

that stage when the Trial had finally commenced, the appellant filed an application being IA. No. 5051/2005 seeking leave of the court to file additional documents under Order XIII Rule 2 CPC. The said application was opposed by the respondents. In any case, the said application was dismissed. But on the issue whether the appeal is maintainable, the Coordinate Bench relied upon the Judgment of the Supreme Court in ***Shah Babulal Khimji v. Jayaben D. Kania AIR 1981 SC 1786*** wherein the Supreme Court has held as under:

“11. Learned counsel for the respondents on the other hand submits that the subsequent judgment of the Supreme Court in Shah Babulal Khimji v. Jayaben D Kania AIR 1981 SC 1786 clearly specifies that no such appeal is maintainable against an order declining documents to be taken on record. Learned counsel FAO(OS) No. 269/2005 Page 5 of 8 in this behalf has referred to the observations made in para 114, 115, 116 and 119 which are reproduced as under:

“114. In the course of the trial, the trial Judge may pass a number of orders whereby some of the various steps to be taken by the parties in prosecution of the suit may be of a routine nature while other orders may cause some inconvenience to one party or the other, e.g., an order refusing to summon an additional witness or documents, an order refusing to condone the delay in filing documents after the first date of hearing, an order of costs, to one of the parties for its default or an order exercising discretion in respect of a procedural matter against one party or the other. Such orders are purely interlocutory and cannot constitute

judgments because it will always be open to the aggrieved party to make a grievance of the order passed against the party concerned in the appeal against the final judgment passed by the trial Judge.

115. Thus, in other words every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. Similarly, orders passed by the trial Judge deciding question of admissibility or relevancy of a document also cannot be treated as judgments because the grievance on this score can be corrected by the appellate court in appeal against the final judgment.

116. We might give another instance of an interlocutory order which amounts to an exercise of discretion and which may yet amount to a judgment within the meaning of the Letters Patent. Suppose the trial Judge allows the plaintiff to amend his plaint or include a cause of action or a relief as a result of which a vested right of limitation accrued to the defendant is taken away and rendered nugatory. It is manifest that in such cases although the order passed by the trial Judge is purely discretionary and interlocutory, it causes gross injustice to the defendant who is deprived of a valuable right of defence to the suit. Such an order, therefore though interlocutory in nature contains the attributes and characteristics of finality and must be treated as a judgment within the meaning of the Letters Patent. This is what was held by this Court in Shanti Kumar's case (AIR 1974 SC 1719) (supra),"

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119. Apart from the tests laid down by Sir White, C.J., the following considerations must prevail with the court:

(1) That the trial Judge being a senior court with vast experience of various branches of law occupying a very high status should be trusted to pass discretionary or interlocutory orders with due regard to the well settled principles of civil justice. Thus, any discretion exercised or routine orders passed by the trial Judge in the course of the suit which may cause some inconvenience or, to some extent, prejudice one party or the other cannot be treated as a judgment otherwise the appellate court (Division Bench) will be flooded with appeals from all kinds of orders passed by the trial Judge. The courts must give sufficient allowance to the trial Judge and raise a presumption that any discretionary order which he passes must be presumed to be correct unless it is ex facie legally erroneous or causes grave and substantial injustice.

(2) That the interlocutory order in order to be a judgment must contain the traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings.

(3) The tests laid down by Sir While, C.J. as also by Sir Couch, C.J. as modified by later decisions of the Calcutta High Court itself which have been dealt with by us elaborately should be borne in mind.”

8. The Coordinate Bench of this Court in Para 13 of the said Judgment has held as under:

“13. In view of the position set out aforesaid we are of the view that the matter is no more res integra in view of the judgment in Shah Babu Lal

Khimji case (supra) where one of the illustrations given of an interlocutory order is a decision declining leave to permit additional documents to be brought on record belatedly. No doubt, it has been observed that there is no exhaustive list possible of all eventualities but illustratively some orders have been given from which appeal would lie though they are interlocutory while illustrations have been given of other orders where no such appeal would lie. In Begum Aftab Zamani case (supra) also the Full Bench only emphasized that it was not possible to make a list of the entire set of orders which constitute a “judgment” and thus each case would depend on its own peculiar facts and circumstances. We have thus no option but to hold that the appeal is not maintainable but naturally if the appellant fails in the suit, it is always open to him to raise all pleas as are available therein including the matter in question in the present appeal as observed by the Supreme Court in Shah Babu Lal Khimji case (supra) in para 114.”

9. From the above, it is clear that in view of the judgment of the Supreme Court in ***Shah Babulal Khimji (supra)***, wherein it is held that declining leave to permit additional documents is an interlocutory order and thus the appeal is not maintainable. In the case in hand also, the application, which has been dismissed by the learned Joint Registrar and as upheld by the learned Single Judge is an application under Order VII Rule 14 CPC, which is to bring on record the additional documents. The ratio of the said judgment is squarely applicable to the facts of this case. Insofar as the

judgment of the Supreme Court relied upon by Mr. Kirti Uppal in the case of ***Kapil Kumar Sharma (supra)*** is concerned, the same is distinguishable on facts, inasmuch as, issue of maintainability of an appeal was not an issue; hence not decided by the Supreme Court. In view of the judgment of the Coordinate Bench of this Court in ***Anil Kapoor (supra)*** based on the judgment of the Supreme Court in ***Shah Babulal Khimji (supra)*** we hold the present appeal filed by the appellant is not maintainable and the same is dismissed.

CHIEF JUSTICE

V. KAMESWAR RAO, J

OCTOBER 05, 2018/jg