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

+ **CM(M) 1303/2018**

TEJ PAL

..... Petitioner

Through: Mr. Sumesh Gandhi, Advocate.

versus

KAILASH DEVI

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

ORDER

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29.10.2018

CM APPL 44711-44712/2018 (for Exemption)

1. Allowed, subject to all just exceptions.

CM(M) 1303/2018 & CM No. 44710/2018 (for stay)

2. The impugned order dated 12th October, 2018 passed by the learned Civil Judge-01, Central District, Tis Hazari Courts, Delhi ('CJ'), dismissing the application of the petitioner/defendant under Section 151 of the Code of Civil Procedure, 1908 ('CPC') seeking permission to call Sh. Manik Chand and Sh. Sher Singh, both sons of Sh. Duli Chand, as his witnesses with direction to produce original document dated 23rd April, 1965 and to testify about the contents of the document as well as the marriage between the respondent/plaintiff and Duli Chand, is the subject matter of challenge in this petition filed under Article 227 of the Constitution of India.

3. Learned counsel for the petitioner contends that the petitioner has been prejudiced by not providing him the opportunity by the learned CJ in not allowing him to summon the said witnesses in support of his defence.

4. Earlier by an order dated 6th January, 2015, the learned Principal Judge, Family Court, has granted an opportunity to the petitioner to cross-examine the respondent/plaintiff with respect to his thumb impressions on the document Mark-A subject to his filing its original with a true translation copy of the document. Pursuant to this order, these witnesses mentioned hereinbefore were summoned for production of the said document. However, on 30th October, 2017, these two witnesses appeared in the court and their statements were recorded with regard to the said document dated 23rd April, 1965 and they testified that they have no knowledge about the document which was shown to them from the file. They also stated that they are not in possession of the original of the said document dated 23rd April, 1965 or Photostat copy thereof. When these witnesses have appeared, they were not cross-examined by the petitioner.

5. The petitioner filed an application under Order XVI Rule 14 CPC seeking permission to cross-examine these witnesses under Section 151 CPC. He, *inter alia*, mentioned in the application that he had telephonic conversation with the above said witnesses wherein they have admitted about the existence of above document Mark-A. This application was dismissed as withdrawn on 21st April, 2018.

6. Having withdrawn his application to summon the said two witnesses on 21st April, 2018, again the petitioner has filed another application under

Section 151 CPC to summon these two witnesses. He has sought the same relief which he requested in his earlier application under Order XVI Rule 14 CPC and was withdrawn by him after detailed arguments on several dates.

7. The learned CJ has noticed that these two witnesses when appeared earlier on being summoned on 30th October, 2017, have already testified that they are not in possession of the said original document dated 23rd April, 1965 or copy thereof and have no knowledge about it. In these circumstances, the learned CJ was perfectly right in dismissing the application being devoid of any merit.

8. In view of the above discussion, I do not find any merit in this petition. The petition and application, being CM No. 44710/2018, are dismissed with no orders as to costs.

VINOD GOEL, J.

OCTOBER 29, 2018

“shailendra”