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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Order: 13.11.2018*
\+ **CM (M) No.1356/2018**

AJAY LAROIA ..... Petitioner
Through: Petitioner in person.

versus

SHIVAN RAJPUT & ANR ..... Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

CM No. 46413/2018 (for exemption)

1. Allowed, subject to all just exceptions.

CM(M) 1356/2018 & CM No. 46412/2018 (for stay)

2. The impugned order dated 24.07.2018 passed by the court of learned Additional District Judge-03, Patiala House Courts, New Delhi ('ADJ') in civil suit No. 56585/2016, is the subject matter of challenge in this petition filed under Article 227 of the Constitution of India.

3. The petitioner/plaintiff, who is an Advocate, filed a suit for recovery of Rs.4,37,500/- against the respondent/defendant on account of his professional charges for conducting the cases on their behalf. The respondent no.1 during his deposition has tendered two certificates Ex.DW1/1 (collectively) issued by the UCO Bank, SSI Branch, Industrial Area, Jalandhar, Punjab

dated 08.12.2014 certifying that a sum of Rs.20,000/- each were deposited in the account of the petitioner on 22.08.2013 and 09.09.2013 respectively and Rs.30,000/- was deposited on 20.11.2013. Tendering and exhibiting these documents in evidence by the respondents/defendants was objected to by the petitioner. The respondents have also filed the photostat copies of three pay-in-slips of the UCO Bank dated 22.08.2013, 09.09.2013 and 20.11.2013 depositing Rs.20,000/-, Rs.20,000/- and Rs.30,000/- respectively in the account of the petitioner. The petitioner filed an application under Section 151 CPC to remove the document from the record whereas the respondent filed an application under Order VIII Rule 1A(3) of the Code of Civil Procedure, 1908 ('CPC') to take the documents on the record.

4. While allowing the application of the respondent under Order VIII Rule 1A(3) CPC and dismissing the application of the petitioner under Section 151 CPC by impugned order, the learned ADJ observed that the amount deposited by the respondent in the account of the petitioner was put to the petitioner in his cross-examination, which was denied by him. It has been the defence of the respondents in their written statement that they have paid the professional charges by depositing Rs.70,000/- in the account of the petitioner.

5. In my view, the power conferred on the trial Court under Order VIII Rule 1A(3), of the CPC is discretionary in nature to ensure

that substantial justice is served. The Apex Court in a catena of cases has observed that while interpreting the provisions of the CPC, care should be taken to ensure that substantial justice is not sacrificed for hyper technical pleas based on strict adherence to procedural law. The stage of production of documents is governed by the Order VIII, Rule 1-A of the CPC which provides as under:-

> "**1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.**—(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.
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> (2)Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.
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> (3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.
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> (4) Nothing in this rule shall apply to documents— (a) produced for the cross-examination of the plaintiff's witnesses, or (b) handed over to a witness merely to refresh his memory."

6. A bare perusal of the provision indicates that all the documents upon which the defendant bases his defence or relies upon in his written statement should not only be specified in a list but also

copies of the said document ought to be produced in the Court along with the written statement. It casts an onerous duty upon the defendant to produce documents based on which the relief is claimed or relied upon by him. It also provides an exception in a case where the defendant wants to place on record certain documents at a later stage. In such a case, sub rule (3) stipulates that "if a document which ought to be produced in Court by the defendant and has not been produced the same shall not be accepted in evidence at the time of hearing of the suit without leave of the Court."

7. The section, read as a whole, leads to an irresistible conclusion that if the defendants have not filed the documents which they ought to have produced in Court along with the written statement, such documents shall not be permitted to be taken on record without the leave of the Court. The discretion thus vests upon the Court either to accept the documents or not once the trial has commenced. Law with regards to discretion is well settled. The discretion should not be exercised indiscriminately or capriciously, a Court is required to visualize the facts & circumstances of the case and only if it is satisfied that non-filing of the document was, for some justifiable reason or other, beyond the control of the defendants and there was sufficient reason, or non-filing was bonafide and was not aimed to prejudice the plaintiff, pass such orders as deemed just and proper.

8. In the case at hand, the filing of the impugned documents at the stage of evidence appears to be bona fide and does not cause any prejudice to the Petitioner as the Respondent has already pleaded in his Written Statement that he deposited amount of Rs.70,000/- in cash in the bank account of the Petitioner. Further, the Petitioner has, admittedly, filed his own bank account statement and the impugned documents only relate to the proving of entries in the bank account statement of the petitioner.

9. Moreover, it would also to be relevant to reproduce Section 165 of the Indian Evidence Act, 1872 (IEA) in order to better gauge the power of the Court to allow documents to be placed on record at a later stage. The section reads as under:-

> **"165. Judge's power to put questions or order production**.—The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:
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> Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:
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> Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under Sections

> 121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted."

A bare perusal of the above section is sufficient to decipher that in furtherance of justice, a judge may order the production of any document and allow it to be placed on record at any stage of the proceedings and neither party shall be entitled to enlarge it. Thus, the Ld. ADJ was well within his power to admit the documents which were requested to be placed on record by the Respondent/defendant.

10. Therefore, I do not find any infirmity or illegality in the impugned order. There is no merit in the petition. The petition along with application, being CM No. 46412/2018, is dismissed accordingly with no order as to costs.

VINOD GOEL, J.

NOVEMBER 13, 2018

"shailendra"