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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 7th February, 2018

+ CM(M) 1189/2017 & CM No. 38492/2017

DAVENDAR KUMAR BHARGAVA & ANR Petitioners

Through: Mr. Virender Mehta with Mr. Gautam
Mehta, Advocates.

versus

ORIENTAL BANK OF COMMERCE Respondent

Through: Ms. Ekta Sikri with Ms. K. Gayatri,
Advocates.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. In the suit (new Suit No. 47/2014) instituted by the petitioners against the respondent seeking recovery of possession, *mesne* profits/damages, a decree was passed on 29.03.2014 by Additional District Judge, *inter alia*, awarding damages for use of the subject premises. The said decree was challenged in RFA No.293/2014 before this Court. The appeal was allowed by judgment dated 07.04.2016 whereby the matter about the determination of the rate at which the user charges were to be paid was remanded to the trial court, the expression used being “for a fresh determination”.

2. It may be noted here that, at the stage of appeal, the respondent had made an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (CPC) seeking opportunity to lead additional

evidence. Given the fact that the judgment of the trial court was set aside and the matter remanded for fresh determination, the liberty for additional evidence was to be availed in the remand proceedings. The respondent led additional evidence pursuant to said liberty granted.

3. It appears during the course of the aforesaid proceedings, some applications were moved by the petitioners (plaintiffs of the case), *inter alia*, for recall of a witness (DW-2) under Order XVIII Rule 17 CPC and another application for summoning of another person for assistance at such stage under Order XVI Rules 1(2) and 4 CPC. Both the said applications, however, were withdrawn and dismissed accordingly on 21.02.2017. It also may be noted that when the said witness DW-2 (Abhishek Krishna Choubey), Branch Manager of Dena Bank (a tenant of the plaintiffs) was being examined, the plaintiff had put certain questions to which objection was taken by the defendant on the ground that they were beyond the scope of the summoned record and at that stage counsel for the plaintiffs/petitioners had sought time so that he could move this Court for opportunity to prove documents as mentioned in the lease deed (of Dena Bank). Concededly, no petition to such effect was moved.

4. Against the above backdrop, the defendant (respondent) having concluded the additional evidence, the plaintiffs (petitioners) moved an application under Order VII Rule 14 CPC seeking to bring on record certified copies relating to some other proceedings taken out under Delhi Rent Control Act before the statutory authorities or in the wake of such proceedings before this Court. The said application, however, was dismissed by the trial court by the impugned order dated

01.06.2017, primarily for the reason the remand of the case by this Court was “for a fresh determination” in which permission for such additional material to be brought on record by the plaintiffs could not be read.

5. Having heard the learned counsel on both sides and having gone through the record, this Court finds the reasoning applied by the trial judge in the impugned order to be wholly erroneous and unfair. All that the petitioners are presently pressing through the aforesaid application under Order VII Rule 14 CPC is to bring on record certified copies of the pleadings or orders in the other litigation which, according to their submissions, would have a bearing on the controversy which is to receive the attention of the trial judge at the time of “fresh determination”. The defendant of the suit having been granted the liberty to adduce additional evidence, it would be unjust to deny a similar opportunity to the plaintiffs of the suit to bring on record the aforesaid documents.

6. The petition is, thus, allowed. The impugned order is set aside. The petitioners will be entitled to bring on record the certified copies of the documents as mentioned in the application under Order VII Rule 14 CPC.

7. The petition and the pending application stand disposed of in above terms.

R.K.GAUBA, J

FEBRUARY 07, 2018

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