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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 85/2019 & CM APPL. 2729/2019**
SIMI KATYAL Petitioner

Through: Mr. AK Singla, Sr. Adv. with Mr.
Bhaskar Tiwari, Adv.

versus

RAM PIYARI BATRA & ORS Respondent

Through: Mr. Rajeev Nanda, Adv. for R-2 &

5.

Mr. Ajit Pratap Singh, Adv. for R-3 &
4.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

22.02.2019

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The respondent no.6 is not served in the present proceedings. However, it has been submitted on behalf of the petitioner and on behalf of the respondent nos.2, 3, 4 & 5 that the said respondent is ex-parte before the learned trial Court in proceedings in CS No.577890/2016 pending before the ADJ-04 (North-West). As per memo of parties placed on record itself in the present petition, the respondent no.1 to the present petition is stated to have already expired on 06.09.2011.

Vide the present petition, the petitioner assails the impugned order dated 22.12.2018 of the learned Court of the ADJ-04 (North-West) in CS No.577890/2016, vide which an application under Order 6 Rule 17 of the CPC filed by the plaintiff i.e. the petitioner herein, - was declined. Vide the said application which was filed at the stage of plaintiff's evidence, the plaintiff sought to amend the affidavit of the witness PW- Rajiv Katyal by

incorporating para-3-A as mentioned in the application which reads to the effect:

*"3A. I say that my Pass book of the account bearing No. 7742 maintained at Punjab National Bank, Rana Partap Bagh, Delhi is exhibited as **EX PW3/1**. My Pass book for the account bearing No. 2765 in Punjab National Bank, Rana Pratap Bagh, Delhi is exhibited as **Ex PW3/2**. Certified copy of Sell Deeds dated 04.04.1995 in respect of property bearing No. E-856, Sarasvati Vihar, Delhi in the name of Simi Katyal, Swarn Katyal and Rajiv Katyal are exhibited as **EX PW3/3 to EX PW3/5**. I say that the statement of account of Smt. Simi Katyal bearing No. 4506 maintained at Canara Bank, Pitampura from 31.02.1996 to 31.03.1996, 01.08.1995 to 31.01.1996 and 01.02.1995 to 31.07.1995 is exhibited as **Ex PW3/6**."*

It was sought to be submitted that the witness Shri Rajiv Katyal had already filed his evidence by way of an affidavit on 04.04.2018 but there were no exhibit marks mentioned in the same qua the documents sought to be exhibited as sought through the proposed amended averments through para-3-A of the affidavit. It has been submitted on behalf of the petitioner that the said documents had been taken on record pursuant to proceedings in the trial itself and had been brought on record during the cross examination of the plaintiff in terms of the proceedings dated 04.04.2018 conducted on behalf of the defendant no.2 to the said suit.

The learned trial Court vide the impugned order has observed to the effect:

"7.....The provisions of Order 6 Rule 17 CPC are clear. In my considered opinion, the allowing of the application under consideration would, to a certain extent, make an impact on the evidence of the plaintiff which may prejudice the case of defendants. The plaintiff ought to have exercised due diligence at

the lime of filing of the initial affidavit of PW Sh. Rajiv Katyal. A party cannot be allowed to fill up the lacuna at a belated stage without any fit and justifiable ground.

(8). In view of above facts and circumstances and reasons given, I see no merits in the application under consideration. Hence, the same is hereby dismissed. However, the evidenciary value of the documents which have already come on record earlier, would be considered at the time of final arguments. Ordered accordingly.”

During the course of submissions that have been made in the present petition, it has been submitted on behalf of the respondents represented today that the order dated 22.12.2018 of the learned trial Court has not been challenged by them. It is essential to observe that vide para-8 of the said order as already adverted to hereinabove, it has categorically been observed by the learned trial Court to the effect that whilst declining the application under Order 6 Rule 17 of the CPC filed by the plaintiff of the said suit i.e. the present petitioner herein to bring on record para-3-A through the affidavit of Mr. Rajiv Katyal, that the evidentiary value of the documents which have already come on record earlier, would be considered at the time of final arguments. Apparently, all documents that have been brought on record during the testimony of the witness PW-1 Ms. Simi Katyal, which have been brought on record pursuant to the directions of the learned trial Court when the cross examination of PW-1 was deferred on 04.04.2018 as learned counsel for the defendant no.2 wanted to ask the question to the witness related to the statement of account for the period prior to 2011 and the witness PW-1 had sought time to produce the relevant documents and stated that whatever relevant documents related to the financial aspects

including the statement of account that were available with her, would be produced by her on the next date with the prayer having been made on behalf of the defendant no.2 that the witness may be asked to produce all such documents from the period 1995 onwards upto the date of filing of the suit on the next date and the witness was directed to produce the documents vide order dated 04.04.2018 of the learned trial Court. The proceedings of the date 19.09.2018 now produced on behalf of the petitioner in reply to a specific Court query indicate that the witness PW-1 Simi Katyal in response to the query put on behalf of the defendant no.2 to the effect:

“Q. Have you filed statement of account for the period 2008 to 2011?, stated as follows

Ans. I have filed only those documents which were available with me.”

Apparently, the documents which had been placed on record during the trial of the suit before the learned trial Court which had been taken on record by the learned trial Court, as observed by the learned trial Court vide the impugned order itself, would have to be considered at the stage of final adjudication. There is however no infirmity in the impugned order which does not permit the application under Order 6 Rule 17 of the CPC filed by the plaintiff to bring on record Para-3-A in an affidavit of the witness PW Rajiv Katyal. The learned trial Court would however, consider all the documents that have been taken on record during the course of trial during the testimony of the witness PW-1 Simi Katyal produced during cross examination of the said witness by the witness on the queries put on behalf of the defendant no.2 as in terms of the observations of the learned trial

Court itself to the effect that the evidentiary value of the said documents would be considered at the stage of final arguments.

The petition calls for no further action and is disposed of with the above observations.

ANU MALHOTRA, J

FEBRUARY 22, 2019

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