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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 196/2019 & CM APPL. 5212/2019**

AJAY KUMAR & ANR Petitioners
Through: Mr. G.S. Gangwar, Advocate.

versus

CHETNA RAJESH NAYAN Respondent
Through

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **04.02.2019**

CM APPL. 5213/2019 (Ex.)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CM(M) 196/2019 & CM APPL. 5212/2019

Vide the present petition, the petitioners assail the impugned order dated 03.10.2018 of the learned Trial Court of the Civil Judge-01, New Delhi in CS No.56630/16 vide which an application under Order 8 Rule 1-A(3) of the CPC filed on behalf of the petitioners herein arrayed as defendant nos. 1 & 2 to the said suit seeking to place on record additional documents was declined. The written statement in the instant case is stated to have been filed in the year 2014. It has been submitted on behalf of the petitioners herein that it was only because the documents had been handed over to the previous counsel

and were not filed along with the written statement that it was on the engagement of the new counsel, it was learnt by the defendants to the said suit i.e. the petitioners herein that the documents which were material and necessary had not been placed on record.

It has been submitted further on behalf of the petitioner that the observations in Para 8 of the impugned order which reads to the effect:-

“Perusal of the application shows that the only ground taken in the application for non filing of these documents is that previous counsel did not filed the same and the present counsel has been engaged on the last date of hearing only. However, it is not mentioned in the application as to on which date the counsel was changed and who was the previous counsel. Moreover, it is pertinent to mention here that after carefully going through the record, it has transpired that alongwith the written statement a vakalatnama was filed on behalf of defendant in the name of Ramesh Chand Gupta and G.S. Gangwar, Advocates. Also the present application has been moved on behalf of defendant by a counsel namely G.S.Gangwar only, meaning thereby, the counsel appearing on behalf of defendant now was infact the counsel since beginning and has already filed his joint vakalatnama with the alleged earlier counsel namely Ramesh Chand Gupta as no other vakalatnama was ever filed in the present case. The said fact clearly shows that defendant has tried to play fraud upon the court and the averments in the present application are totally false and baseless. Also, it is clear from the averments of the defendants itself that all the documents which defendants are seeking to place on record were well within the knowledge and possession of the defendants itself.”

in relation to the aspect of the counsel stated as Sh. G.S. Gangwar having already filed his vakalatnama previously with the previous counsel are erroneous and that thus, the observations that the

defendant had tried to play a fraud upon the court was also erroneous and that the observations also that the averments made in the application were totally false and baseless were wholly erroneous.

Along with the present petition, has been placed at pages 147 & 148 of the petition, the vakalatnama of the learned counsel Sh. Ramesh Chand Gupta, Advocate enrolment number CD-2522/99 which is indicated to have been signed on 09.01.2017 and at page 148 is another vakalatnama of the counsel Sh. G.S. Gangwar and Sh. Ramesh Chand Gupta dated 29.01.2018. Since, it has been submitted on behalf of the petitioner placing reliance on the order sheets prior to year 2017 to contend that there was another counsel who appeared on previous dates and taking into account the copies of the vakalatnamas on the record, it does appear that the factum that Sh.G.S. Gangwar was the previous counsel in the instant case appears to have been erroneously record by the learned Trial Court in the impugned order.

The observations thus, in the impugned order however, do not suffice to detract from the observations in the impugned order in relation to the parameters of Order 8 Rule1-A of the CPC having been categorically not complied with by the defendants i.e. the petitioners herein. It is essential to observe that the issues in the instant case are stated to have been framed on 13.07.2017, and the new counsel in the instant case is stated to have been engaged as per the vakalatnama on the record itself at page 147 to have been engaged on 09.01.2017.

Apparently, no such laxity as sought to be condoned on behalf of the petitioners herein can be condoned in the circumstances of the

case. There is thus, no infirmity in the impugned order except to the extent that it erroneously makes the mention of Sh. G.S. Gangwar having been the counsel for the defendants earlier as well.

In the circumstances, the petition and the accompanying application are thus declined.

Copy of this order be however, sent to the learned Trial Court to be careful in its observations as per record.

ANU MALHOTRA, J

FEBRUARY 04, 2019/NC