

\$~48

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

+ CM(M) 202/2019, CM APPL. 5609/2019

MADHUSUDAN SHARMA & ORS Petitioners

Through: Mr. Vineet Sinha, Mr. Rahul
Malhotra & Mr. Manmeet Singh
Nagpal, Advocates.

versus

OMAXE LTD

..... Respondent

Through: Mr. Rajesh Kumar, Advocate.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

%

06.02.2019

CAV 114/2019

Learned counsel on behalf of the respondent is present. The caveat thus, stands discharged.

CM APPL. 5610/2019 (Ex.)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CM(M) 202/2019 & CM APPL. 5609/2019

Though, time is sought on behalf of the respondent by the learned counsel present for the presence of the arguing counsel for the caveator and as submissions have already been made on behalf of the petitioner, on a consideration of the submissions made and the impugned orders dated 20.11.2018 & 04.01.2019 of the learned Trial Court of the Court of the ADJ-07, South East, Saket in CS

No.10977/16 it is not considered appropriate to adjourn the matter any further.

The first impugned order assailed by the petitioner is the order dated 20.11.2018, vide which an application filed by the petitioner under Section 45 of the Indian Evidence Act, seeking that the FSL, Agra be directed to analyze the signatures of the defendant no.1 upon cheque no.502870 to put forth that the said document had been forged and fabricated by the plaintiff and misused. The impugned order categorically reflects to the effect that the contentions raised by the petitioner herein as submitted even now during the course of submissions made by the learned counsel for the petitioner are to the effect that the cheque which had been issued by the petitioner herein bore no.502877 and not 502870 qua which the suit had been filed, in relation to which aspect, it has been observed by the learned Trial Court that the submissions that had been made on behalf of the plaintiff were to the effect that the MOU between the parties dated 02.05.2005 was not disputed and that the number of the cheque had been inadvertently mentioned as 502877 instead of 502870.

As reflected vide the impugned order and as submitted during the course of submissions that have now been put forth on behalf of the petitioner that the cheque no.502877 has not been presented by the plaintiff for encashment. It is not disputed that there was one cheque that had been issued by the petitioner in favour of the respondent. The impugned order indicates also categorically to the effect that there is

nothing on the record to show that the bank had dishonoured the cheque bearing no.502870 for the discrepancy, if any, in relation to the signatures on the said cheque and rather the same was dishonoured with remarks “funds insufficient” and no where had the bank anywhere stated that “the drawer signatures differed.” It is also indicated vide the said impugned order that though in para 11 of the leave to defend application, it had been contended by the petitioner herein that the cheque was stolen from the office of the petitioner in the cross-examination of DW-1, it was stated that it was misplaced in the market.

It has also been observed therein vide the impugned order dated 20.11.2018 that though the leave to defend application was moved on 01.12.2009, there was no mention of any alleged lodging of NCR which is stated to have been registered on 25.12.2005 and despite an opportunity having been granted by the learned Trial Court, the said document was not produced in evidence.

Taking into consideration the submissions made and observations in the impugned order despite the contention raised on behalf of the petitioner that an issue in relation to the aspect of the veracity of the cheque in question was placed on the petitioner herein, the same does not suffice to set aside the impugned order dated 20.11.2018.

As regards the other impugned order dated 04.01.2019, vide which an application under Section 151 of the CPC filed by the petitioner herein seeking to produce the records of PS Gokul Pura,

Loha Mandi, Agra in relation to the police complaint regarding the loss of the cheque bearing no.502870, as rightly observed by the learned Trial Court, the said document is now sought to be produced at a belated stage in evidence despite an opportunity having been granted to the petitioner earlier with the petitioner having closed the evidence on 28.11.2018.

The petition and the accompanying application CM APPL. 5609/2019 are declined.

ANU MALHOTRA, J

FEBRUARY 06, 2019/NC