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

\+ CM(M) 1083/2018 and CM No.37507/2018

VICKY ..... Petitioner

Through: Mr.M.K.Gahlawat, Advocate

versus

PARDEEP & ANR ..... Respondents

Through: Mr. R.K.Bali, Advocate for R-1.
Mr.Ajay Kumar Yadav, DEO for R-2.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

O R D E R

% 22.01.2019

Respondent No.2 arrayed on record is the proforma party as indicated by the memo of parties as well as Sub-Registrar- IX, Kapashera Delhi,

The petitioner assails the impugned order dated 23.8.2018 of the learned ADJ South West, Dwarka in CS No. 414/17vide which an application under XVIII Rule 17 CPC filed by the plaintiff therein, i.e., the petitioner herein, seeking recall of the defence witness-1 Pradeep who had already been examined and cross-examined submitting *inter alia* that the defendant Pradeep had taken the defence that he had not taken any loan on the suit property but that it had been learnt by the plaintiff, i.e., the present petitioner that the loan that had been taken by the defendant No.1 on the suit property had also been paid which had not been disclosed to the Court and that the plaintiff thus sought the recalling of the DW-1 Pradeep for the same.

The impugned order reflects that the suit is one for specific performance filed on the basis of an agreement to sell dated 6.1.2016 and the respondent No.1, i.e., defendant No.1, in para 4 of his written statement has averred that the loan at the suit property was taken from Canara Bank, Barakhamba Road, by Mohit Sharma and Vijay Kumar and it is essential to observe that the examination in chief of the defendant No.1 vide affidavit dated 20.4.2018 and the affidavit of defendant No.1 in the said suit, as produced in the form of the certified copy indicates that vide the affidavit dated 20.4.2018 it has been submitted by the defendant No.1 to similar effect vide para 9 of the said affidavit to the effect:

> " 9. That Mohit Sharma is a friend and associate of the plaintiff and in the year 2008, the deponent, Vijay Kumar Khadia were students of college and the deponent had left his college 2010 and thereafter, the said Mohit Sharma along with Vijay Kumar Khadia became partners and started building construction work by way of collaboration with the parties and in the year 2015, the deponent was called by the aforesaid persons in Canara Bank at Barakhambha Road, New Delhi and his signatures were obtained by them on certain papers with the pretend that they are taking a loan of Rs.2 lacs and they will repay the same at the earliest but no amount has been received by the deponent in his account or otherwise either from the bank or from the aforesaid persons out of the said loan amount, which was obtained on the basis of property documents of the deponent pertaining to the suit property from Canara Bank, Barakhambha Road, New Delhi vide account number 1994285000001 and the suit property of the deponent was mortgaged by them with the aforesaid bank for the aforesaid

> loan as they wanted to do business and run a company in the name of M/s SIMSIM.COM at the suit property but the aforesaid loan amount was misused by the aforesaid Mohit Sharma and Vijay Kumar Khadia for their personal use by transferring the said loan amount into their personal accounts and the accounts of their firms and near & dear ones. A legal notice dated 29 April 2017 had been issued on behalf of the aforesaid bank to the aforesaid persons and the deponent through K. Gangadharan & Co., thereby, demanding the loan amount. Copy of the aforesaid legal notice dated 29 April 2017 is **Ex.DW-1/E**. Copy of statement of said loan account is **Mark-A.**
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> 10. That in the month of Nov, 2016, the deponent came to know that the aforesaid persons had taken a loan of Rs.20 Lakhs from the aforesaid bank which has been misused and personally used by the aforesaid persons."

The certified copy of the said affidavit is directed to be taken on record.

On a perusal thereof and taking into account the observations in the impugned order dated 23.8.2018 to the effect that in view of the pleadings of the defendant No.1 in its written statement, the plaintiff was at liberty to cross-examine the defendant No.1 when he was present in the witness box qua the factum of the loan, it is apparent thus that there is no infirmity whatsoever in the impugned order as it is not considered appropriate now to permit the recall of the DW-1 at this stage. The petition and the accompanying application are thus declined.

ANU MALHOTRA, J

JANUARY 22, 2019/sv