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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 345/2019 & CM APPL. 9115-9117/2019**
KALAM SINGH Petitioner
Through: Mr. Alok Kumar, Adv.

versus

VIKASH Respondent
Through:

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **25.02.2019**

CM APPL. 9116/2019 (Exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CM APPL. 9117/2019 (Condonation of delay)

This is an application filed on behalf of the petitioner seeking condonation of 21 days delay in re-filing the petition after removal of objections. The same is allowed in view of the reasons explained therein. The application is disposed of.

CM(M) 345/2019

Vide the present petition, the petitioner assails the impugned order dated 01.12.2018 of the learned trial Court of the ADJ-01, South in CS 5830/2016 vide which an application under Order 6 Rule 17 of the CPC filed by the defendant i.e. the petitioner herein, - was declined. A perusal of the application that was filed by the defendant i.e. the petitioner herein was one seeking inserting one para-7 under

the head of 'Preliminary Objections' to the effect "that the suit is hopelessly barred by question of limitation." The impugned order reflects that it had been submitted on behalf of the defendant i.e. the petitioner herein that the additional plea of limitation which had inadvertently not been taken earlier was sought to be taken. The learned trial Court has specifically observed vide the impugned order dated 01.12.2018 to the effect:

"Besides the question of limitation is a legal question which the Court will otherwise require to be looked into while deciding the suit."

It is also indicated that on behalf of the plaintiff i.e. the respondent to the present petition that there was no objection to the framing of an additional issue in relation to the aspect of limitation and an additional issue no.6 has been framed by the learned trial Court to the effect:

***"6. Whether the suit of the plaintiff is barred by limitation?
OPP"***

Apparently, the additional issue having been framed and as the averment that was sought to be incorporated into the preliminary objection was just to the effect that the suit was hopelessly barred by law of limitation, the same has rightly been observed by the learned trial Court being a legal contention, the learned trial Court had essentially to look into the aspect that whether the suit was barred by limitation or otherwise at the time of final adjudication. There is no infirmity in the impugned order declining the application under Order

6 Rule 17 of the CPC that had been filed on behalf of the defendant i.e. the petitioner herein.

During the course of submissions that have been made on behalf of the petitioner and as indicated on a perusal of the petition, the grievance of the petitioner relates to certain objections raised by the petitioner herein during the cross examination of PW-1 which have not been allowed by the learned trial Court. It has been submitted on behalf of the petitioner and as per the averments in the petition that there were certain documents that have been exhibited. It is well settled that the mere exhibition of a document is *per se* not proof of a document. The evidentiary value of the document exhibited has essentially to be considered by the learned trial Court at the stage of final adjudication. With these observations, the petition is disposed of and calls for no further action.

Copy of this order be sent to the learned trial Court.

ANU MALHOTRA, J

FEBRUARY 25, 2019

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