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

+ **CM(M) 97/2020 & CM APPLs. 3376-77/2020**

RAJENDER KUMAR JAIN

..... Petitioner

Through: Mr. Saurabh Kumar Tuteja, Advocate
(M: 9711234754).

versus

PRAKASH RASTOGI

..... Respondent

Through: Mr. Rohit Batra, Mr. Sahil Ralli and
Neha Tyagi, Advocates (M:
9873170804).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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28.01.2020

1. The grievance in this petition is with the impugned order dated 18th December, 2019, by which the Petitioner's/Defendant's (*hereinafter*, "*Defendant*") application under Order VII Rule 14 CPC was dismissed by the Trial Court.
2. The objection of the Defendant is that some of the documents which were exhibited by PW-1 in the examination-in-chief i.e., a CD containing a voice recording, along with a true typed copy of the conversation and a certificate under Section 65B of the Indian Evidence Act and the original police complaint, were filed on record and exhibited without seeking leave of the Court. He submits that these documents were in existence prior to the filing of the suit and there was no reason for the Respondent/Plaintiff (*hereinafter*, "*Plaintiff*") to have not filed the same along with the plaint.
3. Ld. counsel for the Plaintiff submits that the mere exhibition of the documents would not mean that the said documents are to be read in

evidence and in any case, the same were filed prior to the commencement of the Plaintiff's evidence.

4. A perusal of the impugned order shows that the Trial Court has merely observed that since the examination-in-chief was conducted without any objection being raised by the Id. counsel for the Defendant, the application is not liable to be entertained.

5. The Court has perused the examination-in-chief, as also the list of documents and a transcript of the conversation alleged to be contained in the CD. As per the current position in law, the Plaintiff ought to have taken leave of the Court before exhibiting the documents in the examination-in-chief. However, the settled position is that mere exhibition does not mean that the said documents would have to be read in evidence. These documents having now been taken on record, would be subject to objections, if any, raised in respect of the mode of proof and admissibility of these documents, as also any rebuttal evidence that the Defendant may wish to lead in its turn.

6. Thus, while the exhibition of the documents is not being disturbed, at the time of final adjudication, the Trial Court is directed to first consider as to whether these documents have been proved in accordance with law and only thereafter decide whether they are required to be read in evidence for determining the issues arising in the suit. The Defendant is given the liberty to file any documents along with its evidence in order to respond to the documents which are now being taken on record.

7. With these observations, the petition and all pending applications are disposed of.

PRATHIBA M. SINGH, J.

JANUARY 28, 2020/MR