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

+ **CM(M) 304/2020**

M/S SINGH BUSINESS CENTRE LTD Petitioner

Through: Mr. D.K. Sharma, Advocate.
(M:981022417)

versus

SAROJ KHURANIYA Respondent

Through: Mr. Sarvesh, Advocate.
(M:9811111210)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **04.03.2020**

CM APPLs. 8803/2020 & 8804/2020 (both for exemption)

1. Allowed, subject to all just exceptions. Applications are disposed of.

CM(M) 304/2020 & CM APPL. 8802/2020 (for stay)

2. The petition challenges the order dated 30th January, 2020 by which the Petitioner-Company's application under Order XVIII Rule 17 CPC for leading additional evidence and an application under Section 153 CPC for correcting the evidence by way of affidavit have been rejected. The only relief sought by the Petitioner-Company in this petition is for correcting an error in the affidavit filed by Mr. Pankaj Singh Rajput i.e., DW-1 which is stated to be inadvertent. It is submitted that the affidavit describes DW-1 as a Director of the Petitioner-Company whereas he was an *erstwhile* Director of the Petitioner-Company.

3. In the impugned order, while rejecting the application, the Trial Court has observed that the applications have been filed to fill lacunae in the cross

examination and are devoid of any merits. The observations of the Trial Court are as under:

“The plaintiff had raised a plea of non-authorization in favour of DW-1 immediately after the filing of WS by him on behalf of the defendant company. Since then, no authorization was filed nor even at the time of leading of evidence. As far as correction in the evidentiary affidavit of DW-1 is concerned, the same, by no stretch of imagination, can be termed as a typographical mistake. A person, having stood as witness in the witness box and deposing contrary to the facts within his knowledge, cannot be termed as an inadvertent fault.

Both the applications are filed to fill in lacunae and devoid of merits. Both the applications are belatedly filed at the stage of final arguments. Being bereft of merits, the same are dismissed.”

4. The plaint filed by the Respondent was for recovery of a sum of Rs.6,79,101/-. The Defendant in the suit is M/s Singh Business Centre Ltd through its Director/Managing Director – Mr. Pankaj Singh Rajput. The written statement was filed by Mr. Pankaj Singh Rajput on 11th May, 2015. Plaintiff’s evidence is stated to have been concluded and the suit is now listed for final arguments. At the stage of the Defendant’s evidence, Mr. Pankaj Singh Rajput filed his affidavit-in-evidence describing himself as a Director of the Petitioner-Company. During cross-examination it was revealed that Mr. Pankaj Singh Rajput was no longer a Director of the Petitioner-Company and accordingly, the present application was moved seeking to correct the affidavit and/or to lead further evidence to explain this position.
5. Ld. counsel for the Petitioner submits that the affidavit-in-evidence erroneously mentioned Mr. Pankaj Singh Rajput as the Director and it is

only an inadvertent error which ought to be corrected.

6. On the other hand, Id. counsel for the Respondent submits that when Mr. Pankaj Singh Rajput signed as a Director in the written statement, no Board Resolution was filed on record and thus, this error cannot be allowed to be corrected today.

7. This Court has perused the documents on record. Firstly, in DW1's evidence by way of affidavit, DW-1 has described himself as under:

"1. That the deponent is director of Defendant Company, well conversant with fact of the case hence competent to adduce evidence by way of this affidavit."

8. The said affidavit dated 25th March, 2019 was tendered by the witness for the first time on 23rd May, 2019 in the evidence-in-chief. While tendering the evidence in the examination-in-chief itself, the witness states as under:

"I was the Director of the defendant company, however, I have been disqualified by the ROC. I do not know in which year I became disqualified as Director. (Vol. I become disqualified because of default of R.M. Greens Solution Pvt. Ltd.). I have filed the authority showing that I am the duly authorized person to file the written statement on behalf of defendant.

Q: I put it you that you have not filed on record the authorization or the board resolution?

Court Observation: *It is a matter of record."*

9. It is the settled legal position that the affidavit filed as evidence is read as evidence in the suit only after the witness has entered the witness box and deposed to the correctness of the affidavit. A simple affidavit filed on record without the witness deposing to it cannot be read as evidence. At

the time of tendering the affidavit, DW-1 has clearly stated that he *was* the Director in the Defendant-Company and at the time when he deposed he was no longer the Director. DW-1 also clearly states that he has been disqualified by the ROC as a Director though he does not produce any documents to show the date from when he was disqualified. Thus, the entire application under Order XVIII Rule 17 CPC itself is misconceived. The witness has clearly mentioned that he is not the Director of the Petitioner-Company and that he has been disqualified. If the relevant documents to show the disqualification are not filed on record then it is for the Trial Court to consider the said position while adjudicating the matter finally. No application is required to correct the affidavit. The observation of the Trial Court that some lacunae was sought to be filled is also not sustainable from the above narration.

10. Accordingly, taking on record the position that DW-1 was the *erstwhile* Director of the Petitioner-Company and that he was disqualified as the Director, no further orders are called for in this petition. The impugned order stands set aside. Both the applications are not necessary and are accordingly dismissed. The Trial Court shall now proceed to hear the matter finally and adjudicate the same in accordance with law.

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

PRATHIBA M. SINGH, J.

MARCH 04, 2020

dj/T