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

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Judgment delivered on: 09.12.2020

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CM(M) 619/2020

NIRMAL DEVI ORS & ANR.

..... Petitioners

versus

RAKESH KUMAR JAIN & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioners: Mr. Ashok Gurnani, Advocate.

For the Respondents: Mr. Mridul Jain, Advocate.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.32085/2020 (exemption), CM APPL.32086/2020 (exemption), CM APPL.32087/2020 (exemption)

Exemptions are allowed subject to all just exceptions.

CM(M) 619/2020 & CM APPL.32084/2020 (stay)

1. The hearing was conducted through video conferencing.
2. Petitioners impugn order dated 02.03.2020, whereby, two applications of the petitioners under Order 41 Rule 27(1)(aa) Code of Civil Procedure (CPC for short) have been dismissed.

3. Respondents had filed the subject suit for declaration and injunction, *inter alia* seeking a declaration that the cancellation deed executed by petitioner No.1 was null and void.

4. Said suit was decreed after trial by a judgment dated 23.01.2018. Petitioners have impugned the said judgment before the Appellate Court.

5. During the pendency of the appeal, petitioners filed the subject applications seeking to place on record additional documents.

6. The Appellate Court by the impugned order had considered both the applications extensively and has individually noticed each of the documents sought to be produced by the petitioners.

7. The Appellate Court has noticed that with the first application dated 10.01.2019, petitioners had sought to place on record five categories of additional documents mentioned as Annexures A to E.

8. With regard to the documents mentioned in Annexures – A and B, the Appellate Court has noticed that the said document were executed by the petitioner No.1 herself in March 2014 and no explanation was rendered in the application as to why said documents were not relied upon or produced during trial. Petitioner had also failed to mention the source from which she had obtained the documents and failed to rendered any further explanation as to how

she was not in possession of the documents, despite having executed the same herself in the year 2014.

9. With regard to Annexure – C, the Appellate Court has noticed that Annexure – C pertains to some other party and the purpose was to prove that the Power of Attorney is irrevocable when stamp duty is paid as per valuation of the property. The Appellate Court has held that the said documents pertain to some third party and some other transaction and was not relevant to the facts of the case.

10. With regard to Annexure – D, it was noticed by the Appellate Court that by said document, petitioner sought to prove circle rate of the suit property in the year 1996 and no cause was shown as to why said document was neither relied upon nor produced during trial.

11. With regard to Annexure – E, once again the Court has noticed that the said document was of a third party and also no explanation was rendered as to why said document was not produced during trial.

12. With regard to the other application again under Order 41 Rule 27(1)(aa) CPC, the Trial Court has noticed that the petitioners wanted to produce 8 sets of documents mentioned in annexures A to H, out of which three I.e. F to H were case laws which the Appellate Court has held could be produced at the time of arguments.

13. With regard to Annexures – D and E, the Appellate Court has noticed that the said documents are sought to be produced to discredit

the witness Sh. Satpal Sharma, whose testimony was recorded on 20.02.2017. The Appellate Court has noticed that these documents pertain to the year 2012, 2014 and 2015 and were very much available to the petitioners at the time when the said witness was under cross-examined and were not produced at the relevant time.

14. Furthermore, with regard to the documents stated in Annexures – A, B and C, the Appellate Court had noticed that these documents were also in possession of the petitioners and no circumstances have been shown as to why said documents were not produced at the relevant stage. Accordingly, the Appellate Court has rejected both the applications.

15. Order 41 Rule 27 CPC reads as under:-

“Production of additional evidence in Appellate Court-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if –

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) The party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any documents to be produce or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allowed such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced, by an Appellate Court, the court shall record the reason for its admission.”

16. Order 41 Rule 27(1)(aa) CPC lays down that a party to an appeal shall not be entitled to produce additional evidence unless the party seeking to produce additional evidence establishes that notwithstanding the exercise of due diligence such evidence was not within his knowledge or could not after exercise of due diligence be produced by him at the time when the decree appealed against was passed.

17. No explanation has been rendered by the petitioners before the Appellate Court or before this Court to show that the petitioners by exercise of due diligence could not produce the said material at the relevant time or said material was not within their knowledge.

18. On the contrary, the Appellate Court has noticed that all the documents/evidence sought to be produced at the appellate stage were predating the date of recording of evidence and were within the knowledge of the petitioners.

19. As noticed by the Appellate Court, no explanation has been rendered as to why said documents were neither produced nor relied upon at the time of the trial in the suit. Clearly, the petitioners are seeking to cover up the lacunas in their case, which is not the purport of Order 41 Rule 27(1)(aa) CPC.

20. I find no infirmity in the view taken by the Appellate Court in rejecting the applications under Order 41 Rule 27(1)(aa) CPC. No circumstances to counter the findings returned by the Appellate Court have even been shown before this Court.

21. I find no merit in the petition. Petition is, accordingly, dismissed.

22. Copy of the judgment be uploaded on the High Court website and be also forwarded to learned counsels through email.

DECEMBER 09, 2020
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SANJEEV SACHDEVA, J