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

Date of Decision: 09.02.2021

+ **CM(M) 120/2021**

M/S SHANTIVIJAY JEWELERS & ANR. Petitioners
Through Mr.A.K.Vashishtha,
Adv.(Mobile- 9810008639).

versus

M/S GOYAL MODES & ANR. Respondents
Through Mr.Shivain Vaidialingam, Adv.
(M-9873432071).

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
NAVIN CHAWLA, J. (Oral)

CM 5010/2021(exemption)

Allowed, subject to all just exceptions.

CM(M) 120/2021& CM 5009/2021

1. This petition has been filed by the petitioners challenging the order dated 10.01.2020 passed by the learned Additional District Judge-04, Patiala House Courts, New Delhi, on application(s) filed by the petitioners seeking to place on record the additional documents in the suit filed by the respondents being CS No.59517/2016.

2. By the first application dated 23.09.2017, the petitioner herein sought to place on record the affidavit of evidence and cross examination of the father of the respondent no.2 herein, Sh.Mukund Sharan Goyal ,recorded in the suit being CS(OS) No.1853/1998 titled as *M/s Goyal Fashions Ltd. vs. M/s Shanti Vijay Jewellers & Anr.*

3. It is pertinent to note here that the affidavit of Sh.Mukund Sharan Goyal is dated 25.05.2005, which was tendered in evidence in the said suit on 28.07.2006, and the cross examination of Sh.Mukund Sharan Goyal was recorded on 25.08.2009.

4. The application filed by the petitioners did not disclose any reason whatsoever for not filing the same in the suit from which the present petition arises, for a period of eight years. There is no explanation for the delay of eight years.

5. The application further sought to produce the cross examination of one Mr.Arun Jain which was recorded in the said other suit. The same was recorded on 10.05.2012 and again, there is no explanation for the delay of 5 years in filing it in the suit in question.

6. The learned counsel for the petitioner, after some arguments, submits that he is not pressing his challenge against the dismissal of the said application dated 23.09.2017.

7. The second application is dated 18.12.2019 by which the petitioners sought to place on record a sale deed dated 12.01.2005 executed between M/s Vishnu Apartments, a partnership firm and one Mr.Subhash Barjatya with respect to an apartment at Jaipur.

8. The learned counsel for the petitioner submits that the respondent no.1 is one of the partners of M/s Vishnu Apartments. He submits that the sale deed was relevant inasmuch as the transaction in question was conducted by the respondents at the behest of the said Mr.Subhash Barjatya, however, the same had been denied by the respondents, who had pleaded that they had no relationship with the said Mr.Subhash Barjatya.

9. In this regard, it is important to note here that the respondent no.2 was not cross examined by the petitioner in the suit out of which the present petition arises. Even the said Mr.Subhash Barjatya was not summoned as a witness by the petitioners. The said application was in fact premised on the cross examination of Sh.Mukund Sharan Goyal in the other suit, which has been refused to be taken record hereinabove. Mr. Mukund Saran Goyal was neither a party to the present suit nor had been summoned or produced as a witness in the present suit.

10. It is also relevant to note that the other suit, wherein Mr. Mukund Saran Goyal was a party and had given his evidence, was decreed against the petitioners vide judgment and order dated 20.09.2017. The petitioners filed an appeal against the said judgment and decree being RFA(OS) No.68/2018. In the said appeal, the petitioners filed an application under Order 41 Rule 27 of the CPC seeking permission to place on record this very sale deed. The said application was, however, dismissed by the Division Bench of this Court vide its order dated 04.12.2019 observing as under:

“5. On our scanning the impugned judgment, it transpires that the learned Single Judge had specifically noted in para 14 that when Sh.Mukund Sharan Goyal, Managing Director of the respondent Company came in the witness box as PW-1 and was cross-examined by the appellants at length, no suggestion was put to the said witness, if Rs.1.5 crore was paid by him at the behest of Shri Subhash Barjatya, as security advance for the jewellery intended to be taken by the latter from the appellants. Rather, PW-1 had denied that he had come in contact with the appellant no.2 through Shri Subhash Barjatya. The learned Single Judge also observed that in the affidavit by way of evidence filed by Mr.Manoj Godha, appellant no.2, who had appeared in the witness box as DW-1, though the plea taken was that a sum of Rs.1.5 crore had been paid by the respondent/plaintiff at the instance of Shri Subhash Barjatya as a security for the jewellery intended to be taken by him, but, the appellants did not bother to examine Shri Subhash Barjatya as a witness, to substantiate this statement.

6. In view of the aforesaid facts and circumstances, we are of the opinion that nothing material would turn on the certified copy of the Sale Deed dated 12.01.2005 sought to be placed on record by the appellants as additional evidence, since the entire dispute hinges on issuance of a cheque by the appellants in favour of the respondent, which was dishonoured and the acknowledgement dated 12.01.1996, also issued by the appellants in favour of the respondent.”

11. The petitioners thereafter filed an application seeking recall of the order dated 04.12.2019, however, the same was also dismissed by the Division Bench of this Court by its order dated 03.02.2020.

12. As noted hereinabove, the relevance of the sale deed has been pleaded only on the basis of the cross examination of Sh.Mukund Sharan Goyal in the said other suit, wherein the Division Bench of this

Court has already taken a view that the sale deed is not relevant. It is not said as to how the said sale deed has become relevant in the present suit especially when the respondent no.2 was never cross examined by the petitioners.

13. Even otherwise, the delay has been sought to be explained on a fanciful basis of the petitioners having visited Jaipur in relation to the mediation proceedings held pursuant to the orders passed in the above said appeal and only then the said sale deed coming to the knowledge of the petitioners through one of the relatives of the petitioner no. 2. In fact, it is relevant to note here that the application in question was filed by the petitioners in the present suit after the dismissal of their application in the appeal arising out of the other suit.

14. In the present case, it is also noted that the suit has been pending since 1998. The respondent's evidence was closed on 07.11.2007. The petitioners evidence was also closed on 21.11.2012 and the suit was thereafter being listed for final hearing.

15. As noted hereinabove, the applications in question have been filed on 23.09.2017 (which is now not pressed) and 18.12.2019. Clearly, the intention of the petitioners is merely to delay the adjudication of the suit.

16. The third application dismissed by the Impugned Order is one dated 24.05.2019 (the learned counsels submit that it is, in fact, one dated 14.05.2019).

17. The learned counsel for the petitioners submits that the said application had in fact been dismissed for non-prosecution by the order dated 03.08.2019 and therefore, is not in challenge before this Court in the present petition.

18. In view of the above, I find no merit in the present petition, the same is dismissed.

19. The petitioners shall deposit cost of Rs.25,000/- with the Delhi High Court Legal Services Committee. This is in addition to the cost imposed by the learned Trial Court by the Impugned Order.

20. The learned counsel for the petitioners submits that the cost of Rs.10,000/- for each of the applications has been levied by the learned Trial Court by the Impugned Order. As only two applications were in fact listed for adjudication before the learned Trial Court, the third being already dismissed, the cost should be reduced.

21. Considering the above submissions, the cost levied by the learned Trial Court is reduced to Rs.10,000/- each for the two applications that is one dated 23.09.2017 and 18.12.2019. Cost shall be paid/deposited by the petitioners within four weeks from today.

NAVIN CHAWLA, J

FEBRUARY 9, 2021
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