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

+ CM(M) 422/2022 & CMN o. 21668/2022

MS. RITU BHAGAT

..... Petitioner

Through: Mr.Akhil Sachar, Mr.Sunanda,
Mr.Akshar Bhatt, Mr.Sangram Singh and
Mr.Navin Bainsla, Advs.

versus

M/S DIVYANI ESTATES AND PROPERTIES PVT. LTD &
ANR.

..... Respondents

Through: Mr.Lalit Valcha and
Mr.Pranshu Gosai, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (O R A L)

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24.05.2022

1. The impugned order, dated 29th April, 2022, passed by the learned District Judge (Commercial Courts), (the “learned Commercial Court”) rejects an application under Order XVIII Rule 17 of the Code of Civil Procedure, 1908 (CPC) filed by the petitioner for permission to recall PW-2, the second witness of the petitioner [as the plaintiff in CS (Comm) 362/2020 wherefrom the present proceeding emanates].

2. The learned Commercial Court has proceeded on the basis of an averment, in the plaint, to the effect that the only relevant transactions were those covered by a memorandum of understanding dated 28th January, 2015.



3. Learned Counsel for the respondent submits that there is no error, whatsoever, in the impugned decision of the learned Commercial Court, as there is, in fact, such a specific averment, contained in para 3(iii) of the plaint.

4. Nonetheless, the plaintiff has placed reliance on the bank statement of the plaintiff for the period 8th November, 2008 to 8th March, 2020. As to whether this bank statement is relevant, in view of the assertions in the plaint and the case made out by the plaintiff in the plaint, is a matter to be examined by the Court during trial. It is, however, the prerogative of the parties to a litigation to choose the documents on which they seek to place reliance and it would always be open to the opposite party to dispute the relevance of the documents. Once a party seeks to place reliance on documents and places the said documents on record, whether with the plaint or with the written statement, the party is entitled to an opportunity to prove the said documents in accordance with law.

5. The submission of the petitioner in the present case is that, though the bank statement for the period 8th November, 2008 to 8th March, 2020 was placed on record with the plaint, PW-2 was, owing to an inadvertence on the part of the plaintiff, called upon to produce the certified copies of the bank statement of the plaintiff for the period 6th January, 2015 to 29th January, 2015. He submits that, in order for the plaintiff to be able to prove the statement for the period 8th November, 2008 to 8th March, 2020, the interests of justice would



warrant one opportunity to bring PW-2 back into the witness box.

6. Though learned Counsel for the respondent vociferously opposed the petition, he acquiesced, during the proceedings, to grant of one opportunity to the petitioner to recall PW-2 to the witness box, as prayed before the learned Commercial Court.

7. The matter is now stated to be listed before the learned Commercial Court on 28th May, 2022. Accordingly, the learned Commercial Court is directed, on the said date, to issue summons to PW-2, recalling him into the witness box for 3rd June, 2022, so that he could be questioned by the petitioner.

8. It is made clear that the petitioner should be ready to examine PW-2 on the said date and that he would not be entitled to any further opportunity or adjournment for the said purpose.

9. This petition stands allowed to the aforesaid extent.

10. Copy of this order be given *dasti* to Counsel for the parties under signatures of the Court Master.

C.HARI SHANKAR, J

MAY 24, 2022/kr