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

% Judgment delivered on: 08.02.2023

+ CM(M) 198/2023 & CM APPL. 6107/2023, CM APPL.
6108/2023

MD IQBAL AHMED

..... Petitioner

versus

MOHD ASHFAQ (SINCE DECEASED)

THR LRS

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Randhir Singh Kalkal, Mr. Vinod
Sehrawat, Advocates.

For the Respondent : Mr. counsel (Appearance not given)

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The petitioner challenges the order dated 16.12.2022 in suit No. 8/2012 titled “*Mohd. Ashfaq vs. Mohd. Iqbal*” whereby the learned Trial Court has dismissed the application filed under Order VIII Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 and also an application under Order VII Rule 14 of CPC 1908 in the counter claim seeking to place on record certain documents, which were inadvertently, not filled along with the written statement.

2. Mr. Randhir Singh Kalkal, learned counsel appears for the

petitioner and submits that the documents as mentioned in paragraph 2 of the impugned order were already mentioned in the written statement as filed by the petitioner/defendant as also in the counter claim and thus submits that the refusal to take the same on record vide the impugned order is unjust and untenable in law.

3. Learned counsel submits that in place of the document which are now being sought to be placed on record, the earlier counsel had placed on record similar documents, however, pertaining to the residential property bequeathed by the father to the son who is the petitioner herein. On that basis, Mr. Kalkal submits that it is a mere error and the same can be corrected by directing that the documents now sought to be placed on record, replacing those which were filed earlier.

4. Learned counsel submits that the learned Trial Court has committed a grave illegality and the material irregularity warranting interference by this court inasmuch as the said impugned orders prejudicially affect the case of the petitioner/defendant.

5. This Court has considered the submissions made across the bench by Mr. Kalkal and also perused the impugned order as well as the documents placed on record.

6. The argument of Mr. Kalkal in respect of the fact that the documents are only to be replaced in place of the earlier documents being similar is erroneous and beyond the pleadings inasmuch as a perusal of the application filed under Order VIII Rule 1 of the Code of Civil Procedure, 1908 shows that no such averment was made and a simple contention that the previous counsel did not place the present documents on record was made and pertinently blames the previous

counsel for such negligence.

7. Other than that, there is no contention or even a statement made in the said application, as is being now sought to be canvassed by Mr. Kalkal.

8. That apart, it is on record that the evidence of all the witnesses of respondent/plaintiff stands completed.

9. The recording of examination of the petitioner/defendant, who is the main witness, also, admittedly stands completed in all respects.

10. It is only subsequent thereto, it appears, that the petitioner/defendant has realized the lacuna and the folly which affects the petitioner/defendant prejudicially.

11. It is very important to also understand the stage at which such an application has been filed seeking permission of the Court to file those documents on record. Having admitted the fact that the evidence of the respondent/plaintiff is completed as also of the defendant is over, any new document which will now be brought on record shall obviously, without any doubt, prejudicially affect the case of the respondent/plaintiff.

12. In that view of the matter, this court is of the firm opinion that no such indulgence should and ought to be granted. The impugned order is upheld and the present petition is without any merits.

13. In view of the above, the petition is dismissed without any order as to cost.

TUSHAR RAO GEDELA, J.

FEBRUARY 08, 2023/al