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

% Judgment delivered on: 03.02.2023

+ CM(M) 383/2022

SAMEER KAUSHIK

..... Petitioner

versus

SRIRAM COMPOUNDS PRIVATE LIMITED Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Anuj Gupta, Advocate.

For the Respondent : Mr. H.K. Chaturvedi, Mr. Sagar Chaturvedi,
Advocates.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CAV 104/2022

1. Since learned counsel for the respondent enters appearance, the caveat stands discharged.

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2. Petitioner challenges the order dated 08.04.2022 passed by the learned Trial Court in CS DJ 1325/2018 titled as "*M/s Sriram Compounds Private Limited vs. Sameer Kaushik*", whereby an application moved by the petitioner/ defendant under Order VII Rule 14 of the CPC, 1908 seeking taking off the record, exhibit PW-1/29, which is the Board Resolution dated 06.08.2021 and for de-exhibiting the

same, was rejected.

3. Mr. Anuj Gupta, learned counsel appearing for the petitioner submits that it is an admitted position that the Board Resolution never formed part of the original list of documents which was filed along with the plaint. He submits that the said document was surreptitiously introduced subsequently, along with the evidence by way of an affidavit on 26.08.2021.

4. Learned counsel submits that *vide* the order dated 26.08.2021, the learned Trial Court had taken on record the evidence as also recorded the tendering of the said evidence by PW-1 and thereby, exhibit PW-1/29, the said Board Resolution, was also taken on record and marked as such.

5. Learned counsel submits that on that particular day, he was not well and a proxy counsel for the petitioner/ defendant was present in Court, who was unable to object to the same.

6. Learned counsel further draws attention of this Court to page No. 69, which is a typed copy of the original list of documents to submit that the original list did not contain the Board Resolution which is exhibit PW-1/29. In contrast thereto, learned counsel refers to page 133 of the petition, which is purportedly the list of original documents filed on 26.08.2021, whereby under serial No. 15, the said Board Resolution was introduced for the first time.

7. Learned counsel further submits that the said insertion of the Board Resolution exhibit PW-1/29 was not just surreptitious but also violative of the provisions of Order 7 Rule 14 sub Rule 3 of the CPC, 1908.

8. Learned counsel submits that the provision of sub Rule 3 of Rule 14 of Order 7 of the CPC, 1908, prohibits an introduction of any document not filed along with the plaint, from being filed on record of a particular case, without the leave of the Court.

9. Learned counsel submits that admittedly in the present case, no such leave was obtained by the respondent/ plaintiff from the learned Trial Court.

10. *Per contra*, Mr. H.K. Chaturvedi, learned counsel appearing for the respondent/ plaintiff submits that the question of de-exhibiting of a particular document which already stands exhibited by virtue of the tendering of the evidence of PW-1 does not arise. He submits that any objection thereto, regarding the admissibility or otherwise of the said document or the relevancy of the same, is always available to the petitioner during cross examination of PW-1 and, therefore, the order passed by the learned Trial Court is sustainable in law.

11. Learned counsel also draws attention to page No. 205, which is the order dated 26.08.2021 passed by the learned Trial Court while admitting the documents and tendering the evidence of PW-1, to submit that despite the proxy counsel for the petitioner/ defendant being present in the Court, no objection was raised thereto at all and as such, the documents can now only be questioned by the petitioner during the cross-examination, as available to the petitioner.

12. Learned counsel refers to the judgment of the Calcutta High Court in “*Purushottam Dass Bangur vs. M.B. Commercial Company Limited*” reported in 2009 SCC OnLine Cal 1207, whereby the learned Single Judge of the said High Court had observed that a document

which has been tendered in evidence and marked as an exhibit, the question of evidentiary value for the admissibility of the same can only be tested during cross-examination and more so on the ground that the same has been marked without any objection.

13. The learned Single Judge made this observation, however, with the further observation that the same has to be done with care and circumscription.

14. Learned counsel also relied upon the judgment rendered by the learned Single Bench of the High Court of Bombay in “*Sultan Suleman Qureshi vs. Mrs. Anisa Rafiq Charolia & Ors.*” reported in 2016 SCC OnLine Bom 9798 to submit that once the documents are marked as exhibit, they cannot be de-exhibited in a routine manner.

15. This Court has considered the submissions made by learned counsel for the parties and has also perused the documents on record and the impugned order challenged by the petitioner.

16. It is an admitted case of the respondent/ plaintiff that the said Board Resolution Ex. PW-1/29 was not filed along with the plaint nor with the list of documents filed therewith.

17. It is also admitted by the respondent/ plaintiff that at no point of time was an application under Order VII Rule 14 of the CPC, 1908 ever moved in support of the said Board Resolution Ex. PW-1/29 to seek permission of the learned Trial Court to place the same on record.

18. No doubt, it appears as if the exhibit PW-1/29 was marked as an exhibit on 26.08.2021 while the affidavit of evidence of PW-1 was being tendered, however, on a deeper scrutiny of the documents on record shows the truth is otherwise.

19. The copy of the evidence of PW-1 Ms. Sharmishtha Sharma, is placed at page No. 190 of the present petition.
20. A perusal of the evidence brings to fore a startling aspect, in that, the Board Resolution doesn't find mention anywhere in the entire evidence and the further confabulating aspect of the matter is that it is not even marked as an exhibit in the entire evidence by way of affidavit of PW-1.
21. It is surprising how the said Board Resolution has been marked as Ex. PW-1/29 without any reference of the same in the affidavit of evidence of PW-1.
22. The learned Trial Court did not even examine this aspect nor even scrutinized the Examination-in-Chief of PW-1 to ascertain whether, (i) Ex. PW-1/29 was mentioned in the affidavit of evidence or not, (ii) any application under Order VII Rule 14 CPC was ever filed by the respondent/ plaintiff seeking permission to place Ex. PW-1/29 on record.
23. Thus, there is no iota of doubt that the learned Trial Court proceeded with material irregularity and in a procedure unknown to law. Provisions under Order VII Rule 14 CPC are meant to address such procedural grievances which ought to be followed in letter and spirits.
24. In view of the aforesaid, the judgments so relied upon by the learned counsel appearing for the respondent would not come to the rescue of the respondent inasmuch as they are clearly distinguishable on the facts.
25. In view of the above, this Court is of the considered opinion that the said Board Resolution purportedly exhibited as Ex. PW-1/29 could

not have been taken on record by the learned Trial Court for the aforesaid reasons.

26. In that view of the matter, the impugned order dated 08.04.2022 passed by the learned Trial Court is quashed and set aside only in respect of exhibit PW-1/29. The document shall not form part of the judicial record.

27. With the aforesaid observation, the petition is disposed of with no order as to costs.

FEBRUARY 3, 2023/nd

TUSHAR RAO GEDELA, J .

