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

% Judgment delivered on: 09.02.2023

+ CM(M) 978/2018 & CM APPL. 34127/2018

NAND KISHORE

..... Petitioner

versus

BRIG P S JULKA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Aayush Agarwala with
Mr. Siddham Nahata, Adv.

For the Respondent : Mr. Mukesh Birla, Adv.

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 14.05.2023 passed by the learned Trial Court in CS No. 5978/2016 titled "*Brig P S Julka Vs. Nand Kishore*" whereby an application under Order VIII Rule 1 A read with Section 151 of the Code of Civil Procedure, 1908 filed by the petitioner seeking permission to place on record documents in support of his defence, was rejected.

2. Mr. Agarwala, learned counsel appearing for the petitioner submits that the petitioner is a poor contractor and was unable to place

the material documents in support of his defence at the relevant point in time.

3. Learned counsel submits that by way of production of these documents, the petitioner has not sought any amendment in his written statement and it is only production of those documents which was material to defend his case before the learned Trial Court.

4. Learned counsel for the petitioner submits that no prejudice would be caused to the respondent/plaintiff inasmuch all these documents which are sought to be produced and placed on record by the petitioner/defendant, will, obviously be subject to proof thereof and reserving the right of the respondent/plaintiff to cross examine the witnesses on the merits as well as on the documents which may be permitted to be filed. On that he submits that no prejudice shall be caused to respondent/plaintiff.

5. Learned counsel also draws attention of this Court to page 44 of the present petition which is the written statement filed on behalf of petitioner, particularly to para 11 and 12 whereby the categorical denial to the assertions made by respondent/plaintiff are contained.

6. Mr. Agarwala submits on the above basis that having regard to the clear denial to the assertions made by the respondent/plaintiff in respect of the transaction as well as the amount involved in the transaction *interse* the parties would lend credence to the documents which are now being sought to be filed on record. Learned counsel also submits that the denial in these paragraphs is specific and are materially

relatable to the documents which are now sought to be produced before this Court. Learned counsel submits that once the petitioner is able to prima facie show to the Court that documents are intrinsic to the defence and intertwined with the contents of the written statement, the learned Trial Court ought to have allowed the application under Order VIII Rule 1A CPC, 1908 and dismissal of the said application has deprived the petitioner/defendant from an effective defence which is the substratum of the fair play and justice expected from a Civil Court.

7. Mr. Agarwala, learned counsel appearing for the petitioner also relies upon the judgment of Coordinate Bench of this Court in ***Hi-Tech Geosynthetics Pvt. Ltd. Vs. Shubh Constructions Co. (2021) SCC OnLine Del 4083*** rendered on 16.08.2021 to submit that the documents can be taken by the Court at any stage on the basis that in the case of ***Hi-Tech Geosynthetics Pvt. Ltd. (Supra)***, this Court had permitted placement of documents on record even after the recording of evidence of both the parties and at a final heading stage. On that basis, learned counsel submits that the present application is still within time as the petitioner/defendant's evidence is yet to commence.

8. *Per contra*, Mr. Birla, learned counsel appearing for the respondent/plaintiff submits that the application as filed by the petitioner/defendant is conspicuous by the absence of sufficient reasons as to why the documents were not produced and filed before the Court on time, much less, along with the written statement.

9. Learned counsel also submits that the documents have now been filed along with the petitioner/defendant's evidence which is, in any case not permissible under law.

10. Learned counsel also submits that petitioner/defendant was admittedly in possession and custody of the said documents at all points in time, including from the time when the suit was instituted and the written statement was filed. On that basis, learned counsel submits that being aware of what was the case against the petitioner and also knowing fully well what the defence was, not having filed the same along with the written statement or even at a subsequent stage but before the respondent/plaintiff's evidence was carried out would disentitle the petitioner from filing them now.

11. Learned counsel also submits that the documents are being produced at a stage after the respondent/plaintiff's evidence is completed. Any permission granted to the petitioner/defendant at this stage would seriously prejudice the case of the respondent/plaintiff.

12. This Court has considered the arguments of the parties and has also perused the order as well as the documents placed on record by the parties.

13. It is relevant to note that the stand of the petitioner/defendant in his written statement in para 11 & 12 as pointed out by Mr. Agarwala, no doubt, is a categorical denial, however, the version of the petitioner/defendant in support of his defence is conspicuous by its absence in the written statement. The fall out of such lack of

clarification or version of the petitioner/defendant would in any case entail the documents being eschewed in view of the settled law that evidence beyond pleadings even otherwise is not permitted.

14. The arguments of Mr. Agarwala regarding mere filing of documents without amendment of the written statement at the first blush would seem attractive, however, at a closer scrutiny of law inasmuch as the absence of pleadings, would in any case lead to eschewing of the evidence as they are beyond the pleadings. Thus, the non-filing or non seeking of amendment of pleadings in that case is more fatal to the arguments as submitted by Mr. Agarwala.

15. It was also argued before the Bench, that the documents which are now sought to be produced are subject to proof and the respondent/plaintiff would have ample opportunity to cross examine the witness in that regard.

16. This argument would not withstand the scrutiny of law since it is the basic substratum of the issue that prejudice would be caused to the respondent/plaintiff in the absence of pleadings in support of his contrary version to the documents now sought to be produced on record. This, coupled with the fact that there is absence of pleadings stating the version of the petitioner/defendant in his written statement, would be fatal to the argument so addressed.

17. This Court has also perused the application under Order VIII Rule 1A of CPC, 1908. The only reason stated for not having filed the documents filed along with written statement is the alleged shifting of

the residence due to threat extended by the respondent/plaintiff and or his relatives etc and the misplacement of the said original papers due to such shifting. In support thereof, the petitioner has also placed on record a copy of the complaint lodged dated 31.07.2014 giving details of the incident which led to shifting of the house resulting in misplacement of the documents.

18. The reliance on the complaint is neither here nor there, since the relevancy of the said complaint in respect of the misplacement of the documents do not match with each other. Even the compliant does not contain any reference to the misplacement of the documents in question. Thus, this compliant does not assist the argument.

19. So far as the judgment rendered by the Coordinate bench of this Court is concerned, no doubt that the learned Coordinate Bench had permitted the petitioner in that case, to place on record the documents at the final hearing stage, however, the details of the facts involved or the disputes where from such petition arose is not clear. In that view of the matter the said case is distinguishable on facts.

20. In the present facts of the case and in view of the aforesaid observations, regarding the pleadings in the written statement as well as the absence of sufficient explanation in the application under Order VIII Rule 1A of the CPC, 1908, there is no merit in the petition.

21. However, this Court appreciates the efforts made by the learned counsel, Mr. Aayush Agarwala (DHCLSC), appearing on behalf of petitioner.

22. In view of the aforesaid, the petition is dismissed with no order as to costs.

TUSHAR RAO GEDELA, J.

FEBRUARY 09, 2023

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