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

\+ CM(M) 1983/2024

URMEET SINGH KOHLI & ANR. ..... Petitioners

Through: Mr. Harshbir Singh Kohli and Mr. Dev Inder Singh, Advs.

versus

COTTAGE INDUSTRIES EXPOSITION LIMITED ..... Respondent

Through: Mr. Anunaya Mehta and Ms. Satya Jha, Advs.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

O R D E R

% **28.02.2024**

CM APPL. 12280/2024—Exp.

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

CM(M) 1983/2024 and CM APPL. 12281/2024--stay

3. The present petition has been filed under Article 227 of the Constitution of India impugning the order dated 20.11.2023 passed in RCA No. 38/2022, by the learned Principal District & Sessions Judge, South, Saket District Courts, New Delhi (hereinafter referred as the 'PD & SJ'), whereby application under Order XLI Rule 27 read with Section 151 of the Code Of Civil Procedure, 1908 (hereinafter referred to as 'CPC') filed on behalf of the respondent herein seeking permission to take on record additional documents and evidence, has been allowed.

4. Learned counsel for the petitioner submits that the learned PD & SJ has passed incomplete order permitting, the recording of the additional evidence in view of the additional documents allowed to be taken on record without specifying whether the evidence is to be recorded by the learned PD & SJ or by the learned Trial Court. More so, no time frame has been fixed during which the additional evidence is to be recorded and concluded.

5. Learned counsel for the petitioner further brings to the notice of this Court, the order dated 17.02.2022 passed by the learned Coordinate Bench of this Court.

6. The impugned order dated 20.11.2023 has been perused. The learned PD & SJ has observed as under:

> "*11. The plea of the appellant is that after passing of the impugned order, they came into possession of an old file containing various lease deeds and MCD property tax return for FY-1994-95 dated 31.12.1994 during search in their record room which unfortunately could not be traced during Trial of the suit. The lease deeds and MCD tax returns, so discovered, reveals average rate of rent of each of tenancies existing m the property. The documents further reveals that appellant was occupying the premises and on account of non-payment of property tax by respondents, the rent was payable by the appellant was attached by MCD on regular occasions. The right of the appellant to summon MCD witness was dismissed. The documents which are sought to be placed on record are duly signed by the respondents and goes to the root of the issue to determine average monthly profits, which was adjudicated by the Trial Court.*
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> *14.1n this case, admittedly the officials from MCD has not been examined before the Ld. Trial Court irrespective of the fact that despite opportunity appellant failed to lead DE or his right to*

lead DE was closed. The documents sought to be adduced as additional evidence are lease deeds and Tax Returns of MCD which are stated to pertain to the property involved in the instant suit and are of relevant period and the same bears the signatures of the respondents. Hence, the documents so sought to be adduced in additional evidence seems to be a crucial piece of evidence and are necessary to facilitate pronouncing of a judgment in a more satisfactory, composite and holistic manner in light of the judgments of Delhi Metro Corp. Ltd. (supra) and Jai Singh & Anr. (supra). The judgments relied upon by the appellant supports the contention of the appellant.

15.I find merit in this application u/o 41 Rule 27 CPC and the same stands allowed in the interest of justice."

7. In view of the above, the petitioner is at liberty to make the above submissions for clarifications with respect to the time frame and which Court has to record the additional evidence before the learned PD & SJ.

8. No further directions are required, the present petition accordingly stands disposed of.

SHALINDER KAUR, J

FEBRUARY 28, 2024/aks/k