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

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***Judgment reserved on: 07.05.2024***

***Judgment pronounced on: 02.08.2024***

+ CM(M) 916/2023, CM APPL. 28995/2023 - stay

M/S SHANTIVIJAY JEWELLERS & ANR. .... Petitioners

Through: Mr. Amit Verma and Mr. Rakesh  
Kumar Singh, Advs.

versus

M/S GOYAL MODES & ANR. .... Respondents

Through: Mr. Shivain Vaidialingam, Advocate.

**CORAM:**

**HON'BLE MS. JUSTICE SHALINDER KAUR**

### **J U D G M E N T**

1. The petitioners, who are the defendants before the learned Additional District Judge-01, Patiala House Court, New Delhi (in short "Trial Court") have approached this Court to challenge the dismissal of an application filed by them under Order VII Rule 14(3) of the Code of Civil Procedure, 1908 (in short "CPC") seeking to place on record additional document i.e. the certified copy of the cross examination of Sh. Mukund Sharan Goyal, father of respondent no 2, who deposed on 23.02.2021 in the complaint case i.e. CT Case No. 29/2001 titled "*Ashish Goyal vs Manoj Gadho*" filed under Section 138 of Negotiable Instruments Act, 1881 (in short 'N.I. Act') before the Court of Metropolitan Magistrate-09, District Court Jaipur, Rajasthan (in



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short “MM”). The petitioners are thus aggrieved by the impugned order dated 17.03.2023 passed by the learned Trial Court in the case bearing no. CS No. 59517/16 titled as *M/s Goyal Modes and Ors. Vs Shanti Vijay Jewellers*.

2. Now, for a better grasp on the issue, one may recite the facts with the respondent no. 2 on 12.03.1996 having filed a complaint under Section 138 of the N.I. Act, for dishonour of cheque for Rs. 5 Lakhs before the Court of Learned MM, Jaipur, Rajasthan against the petitioners herein, through his father Sh. Mukund Sharan Goyal being his agent by virtue of a Special Power of Attorney dated 11.03.1996. The said suit is stated to be currently pending adjudication before the learned MM, Jaipur, Rajasthan.

3. Thereafter, on 18.08.1998, the respondent no. 1 & 2 filed the present suit for recovery for a sum of Rs. 41,81,752/- against the petitioner no. 1 & 2. Subsequent thereto, as a matter of procedure and defence, the petitioners on 09.10.2001, filed the written statement in the suit denying the claims of the respondents. Respondents also filed replication on 09.03.2004 as a response thereto.

4. The petitioners on 07.04.2021 preferred an application under Order VII Rule 14(3) read with Section 151 CPC before the learned Trial Court for taking additional document on record i.e. certified copy of the cross-examination of respondent no. 2's father in complaint case under Section 138 of N.I. Act which was being tried by the learned MM, Jaipur, Rajasthan.

5. Respondent no. 1 & 2 contested the application and filed their reply to the aforesaid application. In response, rejoinder was also filed by the petitioners reiterating the contents of the main application. Vide impugned



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order dated 17.03.2023, the application of the petitioners under Order VII Rule 14(3) came to be dismissed by the learned Trial Court.

6. Dissatisfied, the petitioners also filed a review application under Order XLVII Rule 1 CPC against the order dated 17.03.2023, which was dismissed vide another impugned order dated 02.05.2023. Thus, the present petition has been filed under Article 227 of the Constitution of India invoking the supervisory jurisdiction of this Court to assail both the impugned orders.

### **SUBMISSIONS OF THE PARTIES**

7. Mr. Amit Verma, learned counsel for the petitioners submitted that the deposition of Sh. Mukund Sharan Goyal in another judicial proceedings tantamount to admission on the part of the respondent no. 2 under Section 17 & 18 of the Indian Evidence Act, 1872 (in short 'IEA'), therefore, the said cross examination is a vital piece of evidence which is necessary to be brought on record in the present case. However, the learned Trial Court has erred in observing in the impugned order dated 17.03.2023 that the father of the respondent no. 2 was a witness in the complaint case under Section 138 N.I. Act and a contradiction from his testimony therein cannot be obtained as he was never summoned or produced as a witness before the learned Trial Court. Whereas, the father of respondent no. 2 was examined as a sole witness before the Court of learned MM, Jaipur wherein he had admitted various material facts.

8. It was submitted that earlier respondent no.2 and his father denied all the contentions of the petitioners of having any relationship with Mr. Subhash and only for the first time in complaint case under Section 138 N.I.



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Act, respondent no. 2's father changed his version by making certain admissions and distortions in his earlier admissions. As also, the additional document is certified copy of the cross examination of the said witness sought to be placed on record by the petitioners was not in existence before 23.02.2021.

9. The learned counsel further submitted that there is no question of re-opening trial as the creation of the certified copy of the cross-examination of Sh. Mukund Sharan Goyal, being a public document, is a recent incident thus, placing the same at an earlier stage was beyond the control of the petitioners. Moreso, the document is necessary as it puts a light on the controversy between the contesting parties thus, the same should be allowed as the relevancy of the same cannot be decided without a trial to prove the veracity of the document.

10. The learned counsel drew the attention of this Court to Section 79 of the IEA and submitted that it categorically defines presumption as to genuineness of the certified copies being public documents, which is by law declared to be admissible as evidence. Thus, learned Trial Court has taken a very technical view in deciding the application of the petitioners and has passed a very casual order without explaining sufficient reasons.

11. To strengthen his pleas, the learned counsel placed reliance on the following judgements:

- ***Om Prakash Gupta vs Ranbir B. Goyal*** in Civil Appeal No. 5460/1999
- ***Pasupuleti Venkateswarlu vs The Motor & General Traders***, AIR 1975 SC 1409



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- ***Chandgi vs Mehar Chand & Ors.***, AIR 1998 P&H 197
- ***Mamraj vs Sabiri Devi & Ors.***, AIR 1999 P&H 96
- ***Jaipur Development Authority vs Smt. Kailashwati Devi***, AIR 1997 SC 3243
- ***Kejriwal Enterprises vs General Manager, Ordinance Factory & Ors.***, AIR 2004 Cal 225
- ***Om Prakash vs Sarupa & Ors.***, AIR 1981P&H157
- ***Mritunjoy Sett (D) bt. LRs vs Jadunath Basak***, AIR 2011 SC 2496
- ***Thimappa Rai vs Ramanna Rai & Ors.***, 2007 (7) SCR 283
- ***Ganmani Anusuya & Ors. Vs Parvetini Amarendra Chowdhary & Ors.***, AIR 2007 SC 2380
- ***Commissioner of C. Ex. Madras vs Systems & Components***, 2004 165 ELT 126 SC
- ***Gautam Sarup vs Leela Jetly & Ors.***, 2008 (4) SCALE 459
- ***DTC vs Shyam Lal***, AIR 2004 SC 4271.

12. On the other hand, Mr. Shivain Vaidialingam, learned counsel for the respondents refuted the submissions of the petitioners and contended that the petitioners could not be permitted to file additional documents at the stage of final arguments, keeping in mind the fact that the evidence of the contesting parties had concluded on 28.04.2014. The respondent no. 2 tendered his evidence by way of affidavit on 14.12.2009. The evidence of the respondents commenced on 14.12.2009 and till 28.04.2014, the petitioners did not produce any evidence to establish the supposed relationship between Mr. Subhash Barjatiya, Mr. Mukund Sharan Goyal and the respondents.



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Moreover, the petitioners did not summon nor produce Mr. Subhash Barjatiya as a witness to espouse their claim. The petitioners on 03.01.2007, filed application for impleadment of Mr. Subhash Barjatiya however, the application was dismissed as not pressed on 06.03.2007. Thus, the documents sought to be placed on record are purposeless and do not in any manner support the cause of the petitioners as contended by them.

13. It was submitted that the issues were framed on 24.08.2005 and even an additional issue was framed on 06.01.2006, however, none of the issues framed, relate to alleged relationship between Mr. Subhash Barjatiya, Mukund Sharan and the respondents. Earlier, the petitioners, in order to create a link between the aforesaid parties, attempted to place on record a Sale deed dated 12.01.2005 with respect to flat in Jaipur, as an additional document, which was dismissed on 10.01.2020 by the learned Trial Court and as also by this court in CM(M) No. 120/2021 vide order dated 09.02.2021.

14. The learned counsel also submitted that this Court's jurisdiction under Article 227 of the Constitution of India is limited and must be exercised cautiously. In the present case, the learned Trial Court has correctly exercised jurisdiction vested in it. It is not the case of the petitioners that the learned Trial Court exercised jurisdiction which it does not possess or has exceeded jurisdiction which it has, therefore present petition sans any merit.

### **ANALYSIS AND CONCLUSION**

15. I have carefully considered the submissions addressed on behalf of the parties and perused the record submitted before me. It would be apposite to appreciate the extent of limited powers of this Court under Article 227 of the



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Constitution of India, it is settled law that this Court in exercise of its supervisory jurisdiction cannot adjudicate the decisions of the sub-ordinate courts as an Appellate Court does in an appeal. The law requires that while exercising the power of superintendence, the Court has to adjudge (i) if there is violation of principles of natural justice, (ii) perversity and illegality in the impugned order, if any and (iii) if the decision of the Trial Court either lacks jurisdiction or is in violation of the fundamental rights of any citizen.

16. The scope of Article 227 has been summarised in ***Mohd. Yunus v. Mohd. Mustaqim & Ors.***, (1983) 4 SCC 566 by the Hon'ble Apex Court wherein it was observed that unless there is failure on the part of the Trial Court to exercise its jurisdiction, or it acted in disregard of principles of natural justice, or the procedure adopted by it was not in consonance with the procedures established by law, only then the High Court will exercise the supervisory jurisdiction to rectify the errors in the decision.

17. The position of law has been further clarified in the case of ***Estralla Rubber v. Dass Estate (P) Ltd.*** [(2001) 8 SCC 97] as under:-

*"...Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a to. "I c conclusion, which the court or tribunal has come to."*

18. Manifestly, the scope of intervention by this Court under Article 227 of the Constitution of India is limited, whereby the findings & facts cannot



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be disturbed, unless the case squarely covers the broad parameters set in hereinabove by the catena of precedents.

19. In the view of aforesaid, it is noticed that though the suit is at the stage of final arguments, however, the document that is sought to be brought on record by the petitioners i.e., the cross examination of respondent No. 2's father as his Power of Attorney Holder in the proceedings in the complaint filed under Section 138 NI Act, arising out of dishonor of cheque, is a subject matter of part of the amount claimed in the present suit. As such the necessity of the document sought to be produced cannot be disputed by the respondents.

20. It is the settled law that under Order VIII Rule 1A(3) of CPC a party can produce the documents at any stage of the proceedings in a suit with the permission of the court. The relevancy of the documents can be seen by the learned Trial Court while appreciating the evidence led by the parties in reference to the pleadings and issues framed.

21. Pertinently, the cross examination of the respondent no. 2's Power of Attorney holder will be deemed to be the evidence of the respondents in the proceedings under Section 138 of the N.I. Act filed by the respondent no. 2 in respect of a cheque stated to be issued towards the amount alleged to be outstanding in respect of the part of the amount claimed in the present suit. The respondents have not disputed that the certified copy of the cross examination of Sh. Mukund Sharan Goyal to be placed on record is the correct copy of evidence recorded in the complaint case.

22. It is trite law that the court has the power to permit the filing of the additional documents at any stage of the proceedings with the leave of the



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court, in the interest of justice. If the petitioners are denied the opportunity to produce the document in question which came into existence on 23.02.2021, it may have serious effect on their case.

23. Having considered the aforesaid, the document is allowed to be placed on record as additional document subject to its relevancy to be decided by the learned Trial Court, however, since the respondents have been prejudiced by the delay caused by the petitioners in diligently proceeding with the case, the petitioners are burdened with costs of Rs. 25,000/- to be paid by them to the respondents before the learned Trial Court on the next date of hearing. Needless to say, the right of the respondents to raise objection, if any, regarding the document shall remain open. The impugned order dated 17.03.2023 and 02.05.2023 are accordingly set aside.

24. Consequently, the petition is allowed and the pending application stands disposed of in view of the aforesaid terms.

**SHALINDER KAUR, J.**

**AUGUST 02, 2024**  
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