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

\+ CM(M) 2996/2024 & CM APPL. 41251/2024

SURESH RASTOGI

.....Petitioner

Through: Mr. Aman Rastogi, Ms. Yashima Arora and Mr. Sanjay Rastogi, Advocates.

versus

MOHD. ADIL FAIYAZ ANSARI

.....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

O R D E R

% **23.07.2024**

CM APPL. 41252/2024 (Exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 2996/2024

1. The petitioner is plaintiff before the learned Trial Court and had moved composite application under Order XI Rule 1 (5) read with order XVIII Rule 17 read with Section 151 CPC praying herein that he may be permitted to place on record additional documents and may also be permitted to examine the concerned witness.

2. The objective behind moving said application was that the plaintiff wanted to place on record the additional documents regarding GST record of the invoices pertaining to the transaction in question. It is contended that the documents are very crucial in order to prove the transaction and the fact that the plaintiff had paid GST and the same had been duly availed by the defendant.

3. The defendant is already proceed against ex-parte vide order dated 19.12.2023.

4. However, when the aforesaid application was taken up by the learned Trial Court, it dismissed the same, holding that these documents were available in public domain and, therefore, were admittedly in possession, power, control and custody of the plaintiff even at the time of institution of suit. Similarly, the contention that Charted Accountant of the plaintiff was having the knowledge and custody of these documents did not find favour with the learned Trial Court, and therefore, the above application has been dismissed and the matter has been fixed for final arguments.

5. Nobody appeared on behalf of the respondent despite service through Whats App.

6. As observed in the impugned order as well, the defendant is being proceeded ex-parte and even when the aforesaid application was taken by the learned Trial Court, there was no appearance from the side of the respondent/defendant.

7. It is apprised that the plaintiff is 93 years of age and is pursuing this matter through his attorney. It is also contended that there is due reflection about the above documents when the suit was initially instituted. Reference in this regard has been made to para 5 of the plaint, list of documents and even the list of witnesses where the name of the concerned official of GST is mentioned at serial No.2.

8. Admittedly, these documents were available in the public domain and some of the documents were available with the Charted Accountant of the plaintiff and, ideally, these should have been placed at the earliest available opportunity. However, fact remains that the learned Trial Court should have

also appreciated the fact that the plaintiff is a senior citizen who is in his nineties and there is also reference of these documents not only in the plaint but also in list of documents and list of witnesses. Reliance has also been placed on *Vijay Kumar Varshney vs. Longlast Power Products Ltd. & Anr.* 2023 SCC OnLine Del 3775. The restriction under Order XI Rule 1(5) CPC against filing of additional documents is not absolute. These can be permitted with the leave of Court. A very rigid interpretation would rather render the provision nugatory altogether.

9. Since the defendant was being proceeded ex-parte, there would not have been any kind of prejudice either.

10. Keeping in mind the reasons assigned, the application under disposal should have been allowed by the learned Trial Court.

11. Viewed thus, the present petition is allowed and the learned Trial Court is directed to permit the plaintiff to place on record the additional documents and to permit him to examine the concerned official for proving such documents.

12. Order *dasti* under the signature of the Court Master.

MANOJ JAIN, J

JULY 23, 2024/ss