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

+ CM(M) 1371/2022

RAJIV TULSHYAN AND ANOTHER.

..... Petitioners

Through: Mr. Anuroop P. S., Adv and Mr. Vipul
Sharma, Advs.

versus

YOGESH MADAN AND OTHERS.

..... Respondents

Through: Mr. Subhash Chandra and Mr. Bipul
Kumar , Advs for R-1 & 2.
Mr. Anupam Srivastava, ASC with
Mr. Deepak Jain, Adv for R-4.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

16.02.2024

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1. The present petition is arising out of Suit no. 827/2019 for mandatory and permanent injunction and damages filed by the petitioner herein against the respondents on 19.11.2019.
2. The petitioners herein, who are the plaintiffs before the learned Trial Court, are the owners of property bearing no. 17, Bhera Enclave (2nd Floor and 3rd Floor), New Delhi (hereinafter referred to as 'subject property') and have renovated the premises. The petitioners are residing in Mumbai and could not look after their property thus, they appointed Sorabh Sahney S/o Late Sh. Hari Om Prakas Sahney as their lawful attorney vide GPA dated 03.07.2013.
3. It is submitted that the learned counsel for the petitioners preferred an application under Order VII Rule 14 read with section 151 of the Code of



Civil Procedure, 1908 (hereinafter referred to as 'CPC') seeking permission to place on record two rent deeds of the previous tenants so as to justify his claim with respect to the damages as prayed in the main petition in July, 2022.

4. It is submitted by the learned counsel for the petitioners that respondent no.1 is the owner of the ground floor of the subject property and had rented out the said portion of the property to respondent no.2 who has affixed commercial hoarding (sing board) of his business in the name of 'Ali Baba Electronics' in front of petitioners' premises. The said sign board has been installed in such a manner that it has blocked the balcony premises of the petitioners at the second floor of the subject property. Apart from the fact that the petitioners cannot sit in their own balcony of the second floor, the petitioners are not able to rent out their premises because of the said sign board, the prospective tenants refuse to take the premises on rent due to the nuisance that has been created by it.

5. It is further submitted by the learned counsel for the petitioners that the petitioners had, time and again, asked the respondents to remove the sign board and on finding no positive response, they finally issued a notice dated 15.10.2019 to respondent nos. 1 & 2. Even after the receipt of the said notice by the respondent nos. 1 & 2, they did not bother to get the sign board removed. Compelled by such circumstances, the petitioners instituted the present Suit before the learned Trial Court on 19.11.2019. The summons of the Suit was served on the respondents. Subsequently the respondent 1 & 2 filed joint written statement whereas respondent no.3 filed a separate written statement to which the petitioner filed a replication. The issues were framed vide order dated 21.05.2022.



6. It is further submitted by learned counsel for the petitioners that the application under Order VII Rule 14 read with Section 151 of the CPC was filed to bring on record two deeds of his previous tenants, since those rent agreements were not traceable at the time of filing of the suit. Therefore, he could not file these two documents at the time of filing the Suit before the learned Trial Court. Subsequently, petitioners filed the said application under Order VII Rule 14 CPC seeking permission to place the rent agreements on record.

7. It is submitted on behalf of the petitioners that the learned Trial Court erred in dismissing their application under Order VII Rule 14 read with Section 151 of the CPC, only on a single ground that the petitioners have not explained that how the documents were traced and they have not pleaded anything in their application about their previous tenants. It is further submitted that the purpose of placing the said additional documents on record is only to the effect that the petitioner wants to prove the loss by way of damages and loss of income suffered by him and to claim his damages from the respondents herein. It is submitted that the learned Trial Court has failed to take into account that there was no other purpose of placing the aforesaid two documents on record.

8. The learned counsels for the respondents have taken a strong objection to the contentions of petitioners of placing the said documents on record by submitting that in case the documents are taken on record, the same shall give rise to new pleas in the Suit of the petitioner which is not permissible in law. Moreover, no cogent reason has been assigned by the petitioners for not placing the documents on record at an appropriate stage and the fact that no averment has been made about the alleged documents in



the petition.

9. It is also submitted on behalf of the respondents that the petitioners have not clarified when exactly the said documents were traced, therefore, there is no infirmity in the order passed by the learned Trial Court and hence it does not require any interference by this Court.

10. Apart from hearing the arguments, the impugned order has been perused by this Court. The learned Trial Court has declined to take the aforesaid documents on record on the reasoning as observed:

“However, in the entire plaint, plaintiff has not whispered anything about his previous tenants. On the contrary, in the para 3 of the plaint, it is claimed that plaintiffs are not able to let out the premises due to sign board. It is not explained by the plaintiff why they have not mentioned the existence of the rent agreement dated 27.07.2017 between plaintiff no.1 and Ms. Pooja K.handelwal who is wife of plaintiff no.1 and Sh. Sanjay who is stated to be the tenant in the suit property as well as rent agreement dated 30.06.2018 with Vinod Garg.

The reasoning of the plaintiff that the said agreements were untraceable is without any basis and in the application, it has not been explained how the untraced agreements were traced.

I am satisfied that with the placing of the two rent agreements, the plaintiff is trying to improve upon his case when the pleadings are complete and issues are already been framed.”

11. The provision of Order VII Rule 14 of the CPC is clear that the parties have an opportunity to produce the documents at a subsequent stage with the leave of the Court to justify the claim. The petitioners have submitted that the reason for placing the aforesaid two documents on record is merely that he wants to substantiate his claim with respect to the damages and nothing beyond that.

12. Having considered the aforesaid submissions made, the impugned



order dated 21.09.2022, is set aside.

13. The aforesaid two documents, which are stated to be already on record by the learned counsel for the petitioners, are allowed to be made part of the Trial Court record, subject to cost of Rs. 25,000/- to be paid by the petitioners to the respondent within one week.

14. The present petition stands disposed of.

SHALINDER KAUR, J.

FEBRUARY 16, 2024/aks/dp