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

% ***Date of decision: 02nd August, 2024***

+ **CM(M) 3087/2024 & CM APPL. 43760-43762/2024**

ANIL MITTAL

.....Petitioner

Through: **Mr. Arjun Sanjay, Advocate.**

versus

VVN TRADING PVT LTD

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is plaintiff before the learned Trial Court.
2. The case is already at the stage of final arguments.
3. When DW-1 Mr. G.V. Sharma, authorized representative of defendant Company entered into witness box, certain questions were put to said witness and in view of the answers given by him, the plaintiff moved an application under Order XVI Rule 14 of CPC praying therein that Mr. L. D. Mittal, stated to be Chairman of the defendant Company, be summoned as a witness.
4. Such request has been declined vide order dated 27.03.2024 and the petitioner has challenged the same by invoking Article 227 of Constitution of India.
5. I have gone through the impugned order.
6. Learned counsel for petitioner has also taken me through the testimony, not only of DW-1 but also of the plaintiff.



7. As per Order XVI Rule 14 of CPC, the Court has been given discretionary power to examine any person if it is of the view that it is necessary to examine such person.

8. In the present case, the suit is of Commercial nature and has been instituted against M/s VVN Trading Private Limited, seeking recovery of Rs. 19,00,000/- with interest etc.

9. The defendant Company has examined its authorized official and merely because in his cross-examination, he had mentioned that there was some meeting between the plaintiff and the chairman of the defendant Company, would not, in itself, be sufficient to assume that the Court should invoke its power under Order XVI Rule 14 of CPC and to call him as a witness.

10. It is not a case where the Court wanted to exercise its power *suo moto*.

11. Undoubtedly, in any such situation, any of the party can always draw the attention of the Trial Court, but it is upto the learned Trial Court to see if there is any compelling reason or whether it is necessary to examine any such person or not.

12. In the present case, it is noticed that after careful perusal of the judgments cited at the Bar, the learned Trial Court came to the conclusion that it was not necessary to examine said Mr. Mittal.

13. It will be also useful to extract para No. 14 to 18, which read as under:-

14.As recorded above, it has submitted on behalf of the plaintiff that DW-1 Sh. G.V. Sharma in cross-examination has deposed that Sh. L. D. Mittal was present on several occasions in relation to execution of the lease and therefore Sh. L.D. Mittal be summoned as a court witness. The Cross-examination of DW-1 took place on 24.11.2023. The relevant portion of the cross-examination relied upon by the plaintiff for the purposes of



this application is reproduced as under:-

*“At this stage, the printouts of WhatsApp messages Ex. PW-1/4 is put to the witness. I do not remember whether the WhatsApp message at page 39 was sent to me by the plaintiff. It is correct that the plaintiff had several meetings with Sh. L.D. Mittal, Director of the defendant company regarding the lease. It is wrong to suggest that during these meeting brokerage payable to the plaintiff had been fixed. It is wrong to suggest that the plaintiff had arranged for renovation of the property before the lease was executed on behalf of the Ms. Le.. Lighting Ltd. **Voluntarily**- it was done by the defendant company. It is correct that discussion regarding renovation of the property took place with the plaintiff. It is wrong to suggest that requisite formalities before Nodia Authority for the lease were done by the plaintiff”*

15. There is nothing in the deposition made by DW-1 in cross-examination from which it can be said that Sh. L.D. Mittal had agreed to pay brokerage to the plaintiff.

16. The plaintiff himself in his plaint has named Sh. G.V. Sharma, General Manager of the defendant company as the person from whom he came to know that the defendant company had desired to put its property on lease. The MOU dated 21.02.2019 is signed by Sh. G.V. Sharma on behalf of the defendant company. The lease Ex. PW-1/2 is also signed by Sh. G.V. Sharma on behalf of the defendant company. The defendant company has examined Sh. G.V. Sharma as a witness as DW-1. Sh. L.D. Mittal as not signed either of these documents.

17. This is not a case where the defendant company has not examined as a witness its employee/official who is aware of the transactions between the parties and who has signed any documents relevant to the issues at hand. Rather as per the plaintiff himself, he became aware of the intention of the defendant company to put its property on lease from Sh. G.V. Sharma, General Manager of the defendant who stands examined as DW-1. Sh. G.V. Sharma has already given evidence on behalf of the defendant company relevant for the purposes of adjudication of this suit. It therefore cannot be said that the defendant company was indulging in the malpractice of not examining the relevant official as a witness and forcing the plaintiff to call him as a witness. In such circumstances, the



plaintiff has been unable to satisfy this court that summoning of Sh. L.D. Mittal as a court witness under Order XVI Rule 14 of the CPC is necessary to enable this court to effectively adjudicate the issues arising for determination in the suit.

18. Hence for the reasons recorded above, the application of the plaintiff under Order XVI Rule 14 of the CPC dated 02.03.2024 praying for summoning of Sh. L.D. Mittal as a court witness has no merit and is dismissed.

14. It is quite clear that it is not that the defendant Company is deliberately avoiding to examine its official who is not conversant with the facts of the case. In any such situation, quite possibly, the Court could have used its such exceptional power under Order XVI Rule 14 of CPC.

15. In the given facts, it cannot be assumed that the defendant is trying to indulge in any malpractice by holding back any material witness, whose testimony can be said to be imperative for effective and proper adjudication of the controversy involved.

16. Moreover, it also cannot be lost sight of the fact that said Mr. Mittal is an aged man and is stated to be 94 years of age.

17. In view of the above and also keeping in mind the reasonings given in the impugned order, this Court is unable to come to any different opinion.

18. Resultantly, the petition is dismissed.

(MANOJ JAIN)
JUDGE

AUGUST 2, 2024/sw