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

% ***Date of decision: 2nd September, 2024***

+ **CM(M) 3303/2024 & CM APPL. 50509-50510/2024**

RAJAT CHILLER

.....Petitioner

Through: Mr. Sunil Dalal, Sr. Advocate with
Mr. Sanjeev Chauhan, Mr. Nikhil
Beniwal, Mr. Navish Bhati and Mr.
Akash Gupta, Advocates.

versus

ABHISHEK RANA

.....Respondent

Through:

**CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN**

J U D G M E N T (oral)

1. Petitioner is defending a recovery suit of sum of Rs. 10,30,000/-.
2. Petitioner i.e. defendant filed an application under Order XVI Rule 1 of CPC seeking examination of one witness from the Bank in order to show that there was enough of funds in his bank account at the relevant time and, therefore, there was no requirement for seeking any loan from the plaintiff.
3. The evidence of plaintiff was closed on 28.03.2023. Defendant's evidence was closed on 09.04.2024 and now the matter is fixed for final arguments.
4. Fact, however, remains that the defendant very well knew about the balance in his bank account since inception and also at the time when the suit



was instituted and when he was required to file written statement. Such averment, it seems, has not even been taken in the written statement.

5. Moreover there was no one to prevent the defendant to have examined the bank official, when the case was already at the stage of defendant's evidence. For reasons best known to the defendant, such bank official was not cited as witness at the first available opportunity.

6. Mere change in the counsel would not give any right or handle to move such application.

7. Since the matter is now fixed for final arguments, it will not be appropriate for this Court to invoke its supervisory power and to permit the defendant to examine said witness from the Bank.

8. The petition is, accordingly, dismissed in *limine*.

(MANOJ JAIN)
JUDGE

SEPTEMBER 2, 2024/sw