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

% ***Date of decision: 26th September, 2024***

\+ CM(M) 3483/2024, CM APPL. 56768/2024 & CM APPL. 56769/2024

AAMIR NASEER

.....Petitioner

Through: Mr. Shivam Sharma with Mr. Rakesh Upadhyay and Mr. Armaan Bhardwaj, Advocates.

versus

MOHAMMAD ZULFIQUAR

.....Respondent

Through: Mr. Praveen Singh with Mr. Javaid Muzaffar and Mrs. Durgesh Nandini, Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT *(oral)*

1. Petitioner is plaintiff before the learned Trial Court and has filed a suit in the year 2022, seeking recovery of sum of Rs. 38,00,000/- approximately.

2. According to the plaintiff, there was business relation between him and the defendant and the defendant had approached him to place order of corrugated boxes and despite the fact that supply was made, the payment was not made by the defendant.

3. It is also contended that a copy of Form- H issued by the Sales Tax Department was placed on record and when *affidavit of admission and denial* was submitted by the defendant, they denied the same and even labelled the

same as forged and fabricated one.

4. Learned counsel for petitioner/plaintiff, very fairly admits, that at one previous point of time, he had moved an application seeking permission to place on record additional document and by moving said application, he simply wanted to place on record the certified copy of the Form-H which he could not earlier submit.

5. Fact remains that such application was dismissed by the learned Trial Court holding that no reason had been assigned as to why these documents could not be filed along with the suit. While dismissing the application, the learned Trial Court also observed that these were only photo copies and the plaintiff may take appropriate steps for proving the documents at the time of trial.

6. Therafter, when the case was fixed for PE on 12.09.2024, the plaintiff made a request for calling the concerned official from the Sales Tax Department, Dhampur, UP to prove the above said Form-H but his such request had been declined, primarily, on the premise that earlier his application regarding production of the same very document had been dismissed and that said order had not been challenged.

7. Needless to say, the sphere, ambit and scope of the application seeking production of document and seeking permission for examination of any witness is altogether different and cannot be equated. Moreover, as noticed, when the above said application was dismissed by the learned Trial Court on 06.05.2024, the learned Trial Court itself had observed that the plaintiff can take appropriate steps for proving those during the trial.

8. Undoubtedly, when asked, learned counsel for petitioner/plaintiff stated that the name of this official did not figure in the list of witnesses submitted by him and to that extent, he admits his mistake but at the same time, it is submitted that the above said document is of unimpeachable character, being in possession of Government Department and said document would rather make the things clear and, therefore, there was no reason to have disallowed any such request.

9. Learned counsel for petitioner/plaintiff states that he would not examine any other witness. He also states that he is ready to bear cost.

10. Keeping in mind the overall facts and circumstances of the case and also in view of the above said observation appearing in order dated 06.05.2024, the learned Trial Court should have rather permitted the plaintiff to call the above said Government official.

11. The petition is, accordingly, allowed with the direction that plaintiff would be permitted to examine the above said official from Sales Tax Department as his witness.

12. The case is stated to be scheduled for 28.09.2024 before the learned Trial Court and on that day, the plaintiff shall take requisite steps in order to summon the aforesaid official. It is however, made clear that the plaintiff would be entitled to only one effective opportunity in this regard.

13. For causing delay, the plaintiff is also burdened with a cost of Rs. 10,000/- which shall be paid to the defendant on the date fixed before the learned Trial Court.

14. The petition stands disposed of in the aforesaid terms.

(MANOJ JAIN)
JUDGE

SEPTEMBER 26, 2024/*sw*