



2025:DHC:2642



\$~59

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 15th April, 2025***+ **CM(M) 4193/2024 & CM APPL. 75908/2024****KAMLA THADANI ALIAS SONA THADANI**PetitionerThrough: Mr. Alok Bachawat and Mr. Ishan
Jain, Advocates

versus

ASHOK THADANI & ORS.Respondent

Through: None

CORAM:**HON'BLE MR. JUSTICE MANOJ JAIN****JUDGMENT (oral)**

1. Petitioner herein is defending a suit for possession, *mesne profits* and damages.
2. Property in question is Flat No. No. 45 Mayfair Apartments, Mayfair Garden, Haus Khas Enclave, New Delhi-110016.
3. It is submitted that the plaintiff has already examined five witnesses and the relevant documents pertaining to the aforesaid property were never placed on record and when the plaintiff brought Mr. Vijay Thadani in witness box as PW-6, such witness i.e. PW-6 Mr. Vijay Thadani made reference to various documents pertaining to suit property. It is contended that it was, rather, for the plaintiff to have moved appropriate application, seeking permission to place these documents on record and without taking any step in that direction, when PW-6 Mr. Vijay Thadani entered into witness box, reference was made to fourteen such documents. It is argued that when



he lodged his grievance with the learned Trial Court in this regard, learned Trial Court took those documents on record subject to certain conditions.

Relevant portion of the impugned order dated 30.07.2024 reads as under: -

“Therefore, subject to proof or subject to this issue being decided at appropriate stage, the evidence of the witness will be recorded. If the Court come to the conclusion that these documents ought to have been with the plaintiff and he ought to have produced the same, merely because they are tendered in evidence today, it would not make any difference. Secondly, if the defendant can show that the witness was not competent to produce the documents on behalf of the society even then the necessary consequences will follow.

Subject to the aforesaid exception the documents are taken on record and evidence will proceed.

PW-6 Sh. Vijay Thadani Further cross-examination is List on 04.12.2024 and 05.12.2024 for remaining PE”.

4. Admittedly, aforesaid documents were produced by the witness and not by a party but fact remains that such witness is not a *summoned witness*. According to learned counsel for petitioner/defendant, the aforesaid witness was produced in the Court by the plaintiff himself and it is not believable that plaintiff would not be having copies of all such documents or, at least, knowledge about such documents.

5. It is submitted that the impugned order has resulted in serious prejudice to the defendant as the learned Trial Court has thought it appropriate to decide the aspect of the *admission of the documents at a later stage* and has also directed him to conduct cross-examination. It is contended that the plaintiff seems to have taken a backdoor entry as what he could not have done directly has, ostensibly, been done indirectly.

6. He also supplements that if he is directed to cross-examine the witness on the aforesaid documents, his very objection with respect to the production



of documents would stand frustrated.

7. Learned counsel for petitioner/defendant submits that suit was filed in the year 2016 and it is not believable that the aforesaid documents would not have been in the knowledge of plaintiff. He submits that even if these documents were not in the active power and possession of the plaintiff, plaintiff could have easily, in terms of Order VII Rule 14 (2) CPC, intimated the Court that such documents were important and were in the possession of someone else.

8. It is submitted that the next dates before the learned Trial Court are 20.05.2025 and 21.05.2025 for the purpose of cross-examination of said witness i.e. PW-6 Mr. Vijay Thadani. It is also contended that plaintiff is very much aware about the fact that such order dated 30.07.2024 has been challenged by the defendant. In this regard, reference has been made to order dated 05.03.2025 passed by learned Trial Court.

9. During course of the arguments, learned counsel for petitioner has confined his relief only with respect to the fact that before proceeding any further and before directing him to cross-examine PW-6 Mr. Vijay Thadani, let learned Trial Court, at least, decide the aspect whether these documents could have been permitted to be placed on record by such witness or not.

10. None appears on behalf of the respondent/plaintiff.

11. Keeping in mind overall facts of the case, the present petition is disposed of with request to learned Trial Court to decide the aspect of the production of aforesaid documents through PW-6 Mr. Vijay Thadani before permitting further cross-examination of said witness.

12. This Court, however, clarifies that it will be upto the learned Trial Court to take appropriate decision in this regard, without getting influenced



by any of the observations appearing in the instant order.

13. The present petition, along with all the pending applications, stands disposed of in the aforesaid terms.

14. A copy of this order be sent to learned Trial Court by the Registry for information and compliance.

(MANOJ JAIN)
JUDGE

APRIL 15, 2025/dr/shs