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

% *Decided on: 8th July, 2022*

+ **CS(OS) 132/2017 & I.A. 8701/2022**

BHAG SINGH GAMBHIR AND ORS Plaintiffs

Through: Mr. Z.A. Siddiqui with
Mr. Aakash Kumar, Advocates
with plaintiff no. 1 in person.

versus

RAMA ARORA Defendant

Through: Ms. Damini Chawla with
Mr. Anshuman, Advocates.

**CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA**

J U D G M E N T

MINI PUSHKARNA, J. (ORAL)

I.A. 8701/2022

1. This is an application filed on behalf of the plaintiffs under Section 151 CPC for allowing the plaintiffs to place on record additional documents.

2. It is the case of the plaintiffs that during the recording of evidence of the witness of the defendant – Mr. Ankur Arora, the plaintiffs presented the ‘returned envelope’ in front of the witness to verify those addresses. However, the Local Commissioner refused to entertain/ put those envelopes on record. By way of the present application, the plaintiffs seek permission to place on record eight

number of 'returned envelopes' which were received back by the plaintiffs with the return remarks. It is submitted that the 'returned envelopes', which the plaintiffs want to place on record, are not new and surprising document, but report the fate of the notices and letters issued on behalf of the plaintiffs. The said envelopes pertain to the letters/ speed post receipts that are already on the judicial record.

3. It has, thus, been prayed on behalf of the plaintiffs that the said additional documents may be allowed to be placed on record. The counsel for the plaintiffs has relied upon the following judgments:

(i) Levaku Pedda Reddamma & Ors. Vs. Gottumukkala Venkata Subbamma & Anr. (Supreme Court) Civil Appeal No.4096 of 2022, SLP (C) No.7452/2022.

(ii) Jindal Stainless (Hisar) Ltd. Vs. Sourabh Jinal & Ors., 2022 SCC OnLine Del 1, decision dated 03.01.2022, Delhi High Court.

(iii) Sugandhi (dead) by legal representatives and Others vs. P. Rajkumar, (2020) 10 SCC 706.

(iv) Subhash Chander vs. Shri Bhagwan Yadav, 2009 SCC OnLine Del 3818, Delhi High Court.

(v) Pandharinath L. Bhandari vs. Bharti Trimbak Bhandari and Ors., 2021 SCC OnLine Bom 447, AIR 2021 Bom 155.

4. On the other hand, counsel for the defendant has vehemently opposed the present application on the ground that the documents sought to be placed on record at the present stage were in the knowledge of the plaintiffs since before the filing of the suit. The said documents were always available with the plaintiffs but were never placed on record. Thus, it has been submitted on behalf of the

defendant that the plaintiffs have failed to provide any cogent or sufficient reason to place the additional documents on record at such a belated stage. Allowing the plaintiffs to file additional documents will reopen the trial of the case and cause grave prejudice to the defendant. In support of her case, the counsel for the defendant has relied upon the following judgments:

(i) Gold Rock World Trade Ltd. Vs. Veejay Lakshmi Engineering Workds Ltd., reported as 2007 SCC OnLine Del 1140.

(ii) Polyflor Limited vs. Sh. A.N.Goenka & Ors., reported as 2016 SCC OnLine Del 2333.

(iii) Shri Ramanand vs. Delhi Development Authority & Anr., reported as 2016 SCC OnLine Del 4925.

(iv) Shree Ramesh Kumar and Another vs. Sangeeta Khanna, reported ILR (2014) II Delhi 1106.

5. I have heard counsel for the parties and perused the record.
6. The documents of which the plaintiffs are seeking permission to place on record are as follows:
 - a) Return Envelope dated 21.11.2016 to Smt. Rama Arora at address C- 28, Ground Floor, Panchsheel Enclave, Delhi- 110017.(ED172981994IN)
 - b) Return Envelope dated 15.12.2016 to Mr. Ankur Arora at address B-10, Ground Floor, GK Enclave 2, New Delhi 110048 (ED775513864IN)
 - c) Return Envelope dated 17.12.2016 to Ankur Arora at address B-10, Ground Floor, GK Enclave 2, New Delhi 110048 (ED172981985IN)
 - d) Return Envelope dated 20.12.2016 to Ankur Arora at address 3rd Floor, Building No. 13, Main ring road, Lajpat Nagar- IV, New Delhi- 110024(ED172981977IN)

e) Return Envelope dated 21.12.2022 to Smt Rama Arora at address C- 28, Ground Floor, Panchsheel Enclave, Delhi-110017. (ED227125923IN)

f) Return Envelope dated 21.12.2022 to Smt Rama Arora at address C- 28, Ground Floor, Panchsheel Enclave, Delhi-110017. (ED22712405IN)

g) Return Envelope dated 17.12.2016 to Ankur Arora at address B-10, Ground Floor, GK Enclave 2, New Delhi 110048 (ED227129695IN)

h) Return Envelope dated 20.12.2016 to Ankur Arora at address 3rd Floor, Building No. 13, Main ring road, Lajpat Nagar- IV, New Delhi- 110024 (ED227125910IN). Copies Attached as Document A (colly.).

7. The aforesaid additional documents are the 'returned envelopes', which were received back by the plaintiffs. The said envelopes pertain to sending by speed post of legal notice dated 15.12.2016 issued by the Advocate for the plaintiffs to the defendant and the letter dated 09.12.2016 written by the plaintiffs to the defendant, regarding execution of Sale Deed in terms of Agreement to Sell dated 19.09.2016. The legal notice dated 15.12.2016 as well as letter dated 09.12.2016 issued on behalf of the plaintiffs are already on record. Attention of this Court has also been drawn to the receipts of speed post, that are proof of sending the aforesaid legal notice dated 15.12.2016 and letter dated 09.12.2016. The said receipts of speed post have already been filed on behalf of the plaintiffs and are available in the documents file. The said receipts of speed post have been filed along with letter dated 09.12.2016 and legal notice dated 15.12.2016. Now, by way of the present application, the plaintiffs seek to place on record the envelopes in which the aforesaid letter and

legal notice were sent by speed post to the defendant and which have been returned with the endorsement that the said letters were not accepted and hence were being returned to the sender.

8. Thus, it transpires that the speed post receipts, pertaining to the 'returned envelopes' which are sought to be placed on record, are already part of record of this Court. Therefore, these 'returned envelopes' which the plaintiffs seek to place on record, cannot be said to be new documents, as other related documents pertaining to the same are already on record. Thus, the envelopes sought to be placed on record are not in the nature of a new development or happening. In view thereof, no prejudice would be caused to the defendant, if the aforesaid documents are allowed to be placed on record for cross-examination of DW1. Further, as pointed out by the counsel for the plaintiffs, these documents go to the root of the issue between the parties as the defendant deliberately did not receive the speed post of notices and letter issued on behalf of the plaintiffs.

9. The Hon'ble Supreme Court in the case of Sugandhi (dead) by LRs & Anr. vs. P. Rajkumar, Rep. by his Power Agent Imam Oli reported as (2020) 10 SCC 706 has held as follows:

"9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice

and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3).”

10. In the present case, during the course of evidence of the witness of the defendant, DW1, the counsel for the plaintiffs presented the ‘returned envelopes’ in front of the witness to verify the addresses therein. However, the Local Commissioner refused to entertain and put those ‘returned envelopes’ on record. This is unjustifiable. In view of the provisions of CPC, a document can be produced/ shown for the first time during cross-examination. If the document produced during cross-examination of a witness is admitted or denied by the said witness, in either case the document cannot be returned and has to be necessarily placed on the Court file.

11. This Court in the case of Subhash Chander vs. Shri Bhagwan Yadav, 2009 SCC OnLine Del 3818, held as follows:

“8. Order 7 Rule 14(4), Order 8 Rule 1 (A) (4), as well as Order 13 Rule 1(3) provide that the provisions requiring parties to file documents along with their pleadings and/or before the settlement of issues do not apply to documents produced for the cross-examination of the witnesses of the other party. To the same effect, Section 145 of the Evidence Act also permits documents to be put to the witnesses, though it does not provide whether such documents should be already on the court record or can be produced / shown for the first time. However, in view of the unambiguous provisions of the CPC, it cannot be held that the document cannot be produced/shown for the first time during cross examination. If the witness to whom the said document is put, identifies his handwriting / signature

or any writing / signatures of any other person on the said document or otherwise admits the said documents, the same poses no problem, because then the document stands admitted into evidence. However, the question arises as to what is the course to be followed if the witness denies the said document. Is the document to be kept on the court file or to be returned to the party producing the same?

9. This question also in my view is also not difficult to answer. It cannot possibly be said that the document should be returned to the party. If the document is so returned it will not be possible for the court to at a subsequent stage consider as to what was the document put and what was denied by the witness. In a given case, it is possible that the answer of the witness on being confronted with the document may not be unambiguous. It may still be open to the court to consider whether on the basis of the said answer of the witness, the document stands admitted or proved or not and/or what is the effect to be given to the said answer. Thus, the document cannot be returned and has to be necessarily placed on the court file.

10. The next question which arises is that if the document is so placed on the court file, whether it becomes / is to be treated as the document of the party producing the same and is that party entitled to prove the said document notwithstanding having not filed the same earlier, as required by law, or the use of the said document is to be confined only to confront the witness to whom it was put and it cannot be permitted to be proved by that party in its own evidence.

11. The legislative intent behind order 7 Rule 14(4) and Order 8 Rule 1A (4) and Order 13 Rule 1(3) appears to be to permit an element of surprise, which is very important in the cross examination of witnesses. A litigant may well be of the opinion that if the document on the basis whereof he seeks to demolish the case of the adversary is filed on the court record along with pleadings or before framing of

issues, with resultant knowledge to the adversary, the adversary may come prepared with his replies thereto. On the contrary, if permitted to show/produce the document owing to element of surprise, the adversary or witness, may blurt out the truth. Once it is held that a litigant is entitled to such right, in my view it would be too harsh to make the same subject to the condition that the litigant would thereafter be deprived of the right to prove the said documents himself. Thus, if the witness to whom the document is put in cross examination fails to admit the document, the party so putting the document, in its own evidence would be entitled to prove the same. However, the same should not be understood as laying down that such party for the said reason and to prove the said document would be entitled to lead evidence which otherwise it is not entitled to as per scheme of CPC and evidence law. For instance, if the document is shown by the defendant to the plaintiff's witness and the plaintiff's witness denies the same, the defendant can prove the document in his own evidence. Conversely, if the plaintiff puts the document to the defendant's witness and the defendant's witness denies the same, the plaintiff if entitled to lead rebuttal evidence would in his rebuttal evidence be entitled to prove the same. However, if the plaintiff has no right of rebuttal evidence in a particular case, the plaintiff would not be entitled to another chance to prove the document. In such a case, the plaintiff has to make a choice of either relying upon the surprise element in showing the document or to file the document along with its pleadings and/or before the settlement of issues and to prove the same. Similarly, if the defendant chooses to confront the document to the plaintiff's witness in rebuttal, merely because the witness denies the document would not entitle the defendant to a chance to prove the document subsequently."

12. It would also be fruitful to refer to the judgment of Bombay High Court in the case of Pandharinath Laxman Bhandari vs. Shri

Bharti Trimbak Bhandari, 2021 SCC OnLine Bom 447, wherein it was held as follows:

“6. Heard. Learned Counsel for the parties. Question arising for consideration; are

a. Whether scheme of Code of Civil Procedure, 1908 (CPC for short) interdicts, the parties to the suit from confronting the witness of adverse party with a document, not on the Courts’ record, but shown or produced to the witness for the first time in his cross-examination ?

b. The next question is: the party, which has otherwise failed to file documents at appropriate stage could be permitted to bring on record the document through evidence of the witness of adversary by putting or confronting him with such document?

7. The main object of the cross-examination is to bring out the falsity and to find out the truth and further to weaken qualify or destroy the case of Opponent and to establish the own case through Opponents’ witness. Thus objects are to impeach the accuracy, credibility and general value of the evidence given in-chief, to sift the facts already stated by the witness, to detect and expose discrepancies or to illicit suppressed act, which will support the case of cross-examining party. The exercise of this right is regarded and one of the most efficacious for recovery of truth. Provisions of Section 137 of the Indian Evidence Act, 1872 empowers and Section 146 to 150, regulates cross examination of witness. Confronting witness, with a document is permissible to test veracity of witness; under Section 146 of the Evidence Act. Though the range of cross-examination is unlimited, it must relate to relevant facts. Thus ‘relevancy of document’, to which witness is confronted with, is a essential condition. (Emphasis supplied)

8. Thus, to be stated that the provisions of Order-7 Rule-14(4), Order-8 Rule-1 (A)(4) and Order-13 Rule-3(a) of the CPC are exceptions to the Rules, regulating the production of documents by the Plaintiffs and Defendants

alongwith the plaint and written statement. To achieve the desired result. While witness of adverse party is examined, if the party to the suit is not permitted to confront the witness with a document, which has not been produced with the pleadings, adverse party cannot test the veracity or impeach the credit of the witness. Thus, the legislation in its wisdom carved out aforesaid exceptions. Thus, in view of explicit provisions of CPC, it cannot be held that the document cannot be produced or shown, for the first time to the witness during the cross-examination, though it was not produced with the pleadings. The first question is answered accordingly.”

13. The judgments relied on behalf of the defendant do not apply to the facts and circumstances of the present case.

14. In the present case, the evidence is still underway. Considering the aforesaid findings and the position that the connected documents viz. letter dated 09.12.2016, legal notice dated 15.12.2016 and speed post receipts of the said documents, are already on record and the plaintiffs now seek to place on record the said envelopes which came as ‘returned’; and considering the fact that the said envelopes were also presented to the witness of the defendant during the course of evidence, this Court deems it fit to allow the present application.

15. The ‘returned envelopes’, as detailed hereinabove as (a) to (h), are taken on record.

16. Application stands disposed of accordingly.

**(MINI PUSHKARNA)
JUDGE**

JULY 8, 2022/PB