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

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**C.M. (Main) No.185 of 2010 & C.M. Appl. Nos.2427-2428 of 2010**

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**11.02.2010**

AGYA RAM SOOD

.....Petitioner

Through: Mr. P.P. Ahuja, Advocate.

Versus

SAMEER WASON & ANR.

.....Respondents

Date of Reserve: 8<sup>th</sup> February, 2010

Date of Order: 11<sup>th</sup> February, 2010

**JUSTICE SHIV NARAYAN DHINGRA**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

**J U D G M E N T**

**1.** By this petition, the petitioner has assailed an order dated 31<sup>st</sup> October, 2009 passed by the learned first appellate court (Rent Control Tribunal) dismissing an application under Order 41 Rule 27 read with Order VI Rule 17 CPC seeking permission to examine additional evidence at the stage of appeal and amendment of the written statement.

**2.** The petitioner in this application prayed for examination of Mr. Ashwani Kumar Dandona, Advocate to prove that along with the notice dated 17<sup>th</sup> August, 1998 served on behalf of the petitioner to respondent No.2, a pay order issued by Oriental Bank of Commerce for a sum of Rs.1,716/- as arrears of rent was also sent. The application was opposed by the respondents on the ground that Mr. Ashwani Kumar Dandona was the advocate of the petitioner during trial. The written statement was filed by the petitioner

through the same advocate. The witness from Oriental Bank of Commerce wherefrom draft was got prepared was also examined and the evidence on this issue, whether the draft was sent or not, was led. The learned first appellate court observed that issue was amply clear that from the very beginning. The appellant knew that the pay order has not been encashed and in that circumstance, it was for him to lead necessary evidence before the Additional Rent Controller. The evidence which was not led at the stage of trial but was within the knowledge of the petitioner, cannot be permitted at the stage of appeal and the appellate court dismissed the application.

**3.** Under Order 41 Rule 27 CPC, the additional evidence can be allowed at the stage of appeal under following circumstances:-

- (i) The evidence sought to be led was refused to be admitted by the trial court.
- (ii) The applicant, despite due diligence, had no knowledge of existence of the evidence or despite due diligence could not be produced by him before the trial court.
- (iii) The appellate court required any documents to be produced or any witness to be examined to enable it to pronounce the judgment or for any substantial cause.

**4.** Thus, the additional evidence under Order 41 Rule 27 CPC cannot be allowed if above three circumstances are not there. It is not the case of the petitioner that the trial court had refused to admit any document or evidence produced by the applicant. It is also not the case of the petitioner that the evidence sought to be produced was not within his knowledge or he could not produce it despite due diligence. The witness sought to be examined was the very advocate of the petitioner who conducted the trial. The notice in question was also sent by him. In the written statement, a plea was also taken that the alleged demand draft was sent along with notice. Thus, the evidence was within the

knowledge of the petitioner. The witness sought to be examined was none else but the advocate of the petitioner. Thus, the case is not covered under the second ground for allowing evidence. It is not the case that the appellate court required any document to be produced before it to enable it to pronounce the judgment.

**5.** Order 41 Rule 27 CPC cannot be resorted to by the parties to examine left out witnesses at the appeal stage nor for producing the witnesses which a party deliberately did not examine at the trial stage and when during appeal a weak case I sensed seeks examination of such witnesses. Neither this rule can be taken recourse to since the party finds that some material could have tilted the decision but has not been produced before the trial court though it was within the knowledge; neither inadvertence is a ground recognized under Order 41 Rule 27 CPC to enable a party to seek production of additional evidence. The petitioner was not entitled to produce additional evidence unless he showed that in spite of due diligence, he could not produce witness who was necessary to be examined to pronounce the proper judgment.

**6.** I, therefore, find no infirmity in the order of the first appellate court. The present petition is not maintainable and is hereby dismissed.

**SHIV NARAYAN DHINGRA J.**

**FEBRUARY 11, 2010**  
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