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

+ **CS(COMM) 117/2018, I.A. 4503/2024**

**DARSHAN SINGH**

..... Plaintiff

Through: Mr. Yashwardhan Singh, Advocate.  
versus

**BALDEV SINGH**

..... Defendant

Through: Mr. Jayant Mehta, Senior Advocate,  
Mr. Aman Nandrajog, Mr. Ujjwal  
Malhotra, Mr. Yash Gupta, Advocates  
for Baldev Singh.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**ORDER**

**28.03.2024**

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**O.A. 41/2024 (appeal under Rule 5 of Chapter II of the Delhi High Court (original side) Rules, 2018 impugning the order dated 29.01.2024 passed by the ld. Joint Registrar)**

1. The Defendant/ Appellant appeals order dated 29<sup>th</sup> January, 2024, wherein the Joint Registrar, while recording the statement of DW-2, Mr, Satwinder Singh, has observed that the document sought to be produced by the said witness along with his affidavit of evidence, cannot be taken on record. The observations of the Joint Registrar read as under:

**"Court observation:** Document cannot be permitted to be exhibited.

**xx-xx-xx**

**Court observation:** In the understanding of the Court, though the witness has chosen to rely upon the said document, the exhibition of such document has been declined since this document was neither a part of the written statement nor any permission had been sought to place it on record as an additional document. Consequently, the defendant cannot



*be permitted to bring the document on record through back door entry.”*

2. The document referred above is an extract of the December 2012 edition of a magazine titled ‘Footwear Today’.<sup>1</sup> According to the Joint Registrar, the Document produced by DW-2 cannot be considered as it was neither referred to in the written statement, nor did Defendant seek any permission to place it on record as an additional document.

3. Representing the Defendant, Mr. Jayant Mehta, Senior Counsel and Mr. Aman Nandrajog, counsel, argue that in rendering the impugned findings, the Joint Registrar has failed to take note of Order XVI Rule 1A of the Code of Civil Procedure, 1908 [“CPC”], which permits a witness to produce documents without applying for issuance of summons. They further submit that the Document was not in the possession of the Defendant as the same is an advertisement published at the behest of DW-2 in a magazine. Hence, they could not introduce the same at an earlier stage. In support, reliance is placed upon the judgment of the Supreme Court in *Ashok Sharma v. Ram Adhar Sharma*.<sup>2</sup>

4. On the other hand, Mr. Yashwardhan Singh, counsel for the Plaintiff/ Respondent, opposes the present appeal, arguing that the Defendant, having failed to seek the leave of the Court before producing the Document, cannot be permitted to introduce the same through a back door. He submits that allowing the Document to be produced at the stage of trial without due cause, will be contrary to the intent of the Commercial Courts Act, 2015. This would also severely prejudice the Plaintiff, who never got any opportunity to meet with the Document during their evidence. To buttress

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<sup>1</sup> “Document”.

<sup>2</sup> (2009) 11 SCC 47.



his submissions, reliance is placed upon the judgment of this Court in *Entertainment Network (India) Ltd. v. HT Media Limited*.<sup>3</sup> Additionally, Mr. Singh argues that the Document does not seek to address the controversy posed by questions No. 4 and 5, in response where to the Document has been referred to by DW-2. Thus, Mr. Singh raises a challenge to the relevance of the Document to the present case.

5. At this juncture, Mr. Mehta submits that in view of the fact the Order XVI Rule 1A of the CPC is also subject to Order XVI Rule 1(3), perhaps, the observation of the Joint Registrar to the extent that leave of the Court should have been sought, is correct. Therefore, he fairly states that Defendant would like to move an appropriate application to seek the leave of the Court to place the Document on record, before the Court were to rule on this appeal.

6. Accordingly, the hearing is adjourned to enable the Defendant to take appropriate steps to the above effect.

7. Re-notify on 08<sup>th</sup> May, 2024.

**SANJEEV NARULA, J**

**MARCH 28, 2024/ab**

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<sup>3</sup> DHC Neutral Citation: 2022:DHC:3329.