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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 61/2016**
MOHD ASHHAR Plaintiff
Through Mr. Anil Kr. Chandel, Mr. Preeti
Gupta & Mr. Ajeet Patel, Advs. with
PW1 in person

versus

ZEESHAN ZAMA KHAN & ANR Defendant
Through Mr. Virender Goswami, Ms. Soni
Singh, Mr. Mubashir Mushtaq & Mr.
Shamik Saha, Advs.

CORAM:

SHARAD GUPTA (DHJS), JOINT REGISTRAR (JUDICIAL)

ORDER

% **20.09.2019**

CS(OS) 61/2016

It is jointly stated by the parties that the previous cost has been paid.

Mr. Kapil Rawat, previous Ahlmed in court of Ms. Ankita Lal, Ld. MM-08, South East, Saket Courts, New Delhi is present with summoned records. However, learned counsel for plaintiff submits that he is not examining the said witness at this stage. Earlier it was stated by learned counsel for plaintiff that he does wish to examine Mr. Kapil Rawat but now it is stated that the witness is not required to be examined at this stage.

Learned counsel for defendants submits that the documents sought to be produced by Mr. Kapil Rawat are required to be impounded. Reliance is placed upon pronouncement in “*i) Yellapu Uma Maheswari and Another v. Buddha Jagadheeswararao and*

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Others, (2015) 16 Supreme Court Cases 787; ii) Chandrama Singh v. Awadh Bihari Singh and Anr., MANU/BH/0097/1959, and iii) Government of Andhra Pradesh and Ors. v. P. Laxmi Devi, MANU/SC/1017/2008.”

It is stated that it is the duty of the court u/S 33 of the Indian Stamp Act to impound such documents. It is further asserted that in as much as the said documents have been produced in court by Mr. Kapil Rawat, the said documents are to be impounded. Reliance is placed upon ***Chandrama Singh (supra)***.

However the summoned witness Mr. Kapil Rawat has not been examined-in-chief in court and the said documents have not been tendered in evidence. While the documents have been produced in court in the physical sense, the documents have not been produced in the sense of the said documents being produced in evidence. Reliance on ***Chandrama Singh (supra)*** is of no help to the plaintiff in as much as in that case also the document in question was directed to be produced in the court and was taken on record before it was directed to be impounded.

Plaintiff is the master of his case and cannot be forced to lead evidence on the aspects on which he does not wish to adduce further evidence.

Learned counsel for plaintiff though earlier stated that plaintiff would not be examining Mr. Kapil Rawat now states that he will take instructions regarding the examination of Mr. Kapil Rawat but he

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does not wish to examine him at this stage. In view of said assertions, to my mind, it would be appropriate, if the question as to whether the documents sought to be produced by Mr. Kapil Rawat are liable to be impounded u/S 33 of Indian Stamp Act is left open to be decided as and when the said documents are sought to be produced in evidence before the undersigned by summoning any witness or by tendering the same. The documents already on record in testimony of PW1 being photocopy cannot be impounded at this stage. Accordingly PW Mr. Kapil Rawat is discharged.

Re-notify the matter for PE on 03.12.2019.

SHARAD GUPTA (DHJS)
JOINT REGISTRAR (JUDICIAL)

SEPTEMBER 20, 2019/ab

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