

\$~5

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ TEST.CAS. 2/2006
 BHARAT BHUSHAN GUPTA

..... Petitioner

Through: Petitioner in person

versus

STATE ANDS ORS

..... Respondents

Through: Mr. Sanjib Dutta, Adv for R-2 & R-3
 alongwith R-2 in person

CORAM:
SH. DEEPAK WASON (DHJS), JOINT REGISTRAR
(JUDICIAL)

ORDER
01.11.2019

%
IA no. 8134/2019 (application under Section 137 & 138 of Indian Evidence Act read with Order XVIII Rule 17 and Section 151 of CPC moved by respondent no. 2.

Today, the matter is fixed for orders on the captioned IA.

By way of the present order, I shall decide the above said application.

It is stated in the application that cross-examination of OW-1 / respondent no. 2 was going on and in the meantime, respondent no. 2 had filed an application under Order VIII Rule 1 A read with Section 151 CPC for taking on record certain additional documents and the said application was allowed by the Hon'ble Court vide order dated

05.04.2019. It is further stated in the application that the additional evidence by way of affidavit of OW-1 has also been filed alongwith this application.

By way of the present application, it is prayed that respondent no. 2 be allowed to exhibit the additional documents already taken on record vide order dated 05.04.2019 and it is further prayed to waive off the cost of Rs. 5,000/- imposed upon the respondent no. 2 vide order dated 22.05.2019.

Petitioner has filed a detailed reply of the application wherein petitioner has specifically stated that application is false, frivolous, totally misconceived and the application cannot be allowed and it is requested that application be dismissed with heavy cost.

I have perused the entire record. I have also heard the learned counsel for both the parties.

By way of the present application, respondent no. 2 wants to file the additional affidavit to exhibit documents which were ordered to be allowed vide order dated 05.04.2019, passed by Hon'ble Court. Perusal of record shows that vide order dated 05.04.2019, the application of respondent no. 2 to file additional documents was allowed. Hence, in view of the same, the present application with regard to filing additional affidavit ought to be allowed. Accordingly, additional affidavit filed by the respondent no. 2 is taken on record. As far as exhibiting of these additional documents is concerned, the same can be proved by the respondent no. 2 in accordance with law in his evidence.

The second relief with regard to waiver of cost is concerned, perusal of record shows that on 22.05.2019, the learned counsel for respondent sought time to file additional affidavit of respondent no. 2 to exhibit the documents and further sought time to move an appropriate application and matter was adjourned subject to cost of Rs. 5,000/- to be paid to the petitioner. Hence, it cannot be said that cost was imposed without any reason. Accordingly, prayer with regard to waiver of cost is declined. **IA stands disposed of accordingly.**

Re-notify the matter for **tendering the additional affidavit of OW-1 on 13.02.2020.**

**DEEPAK WASON (DHJS)
JOINT REGISTRAR (JUDICIAL)**

NOVEMBER 01, 2019/ym

[Click here to check corrigendum](#)