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IN THE HIGH COURT OF DELHI AT NEW DELHI

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TEST.CAS. 38/2014

HARKIRAT SINGH SODHI

..... Petitioner

Through: None.

versus

GOVT OF NCT OF DELHI & ORS

..... Respondent

Through: Ms. Sonali S.S. & Ms. Akshita, proxy
counsel for Ms. Amrit Kaur Oberoi,
Adv. for R-2 to 4.

CORAM:

**SH. VIJAY SHANKAR (DHJS), JOINT REGISTRAR
(JUDICIAL)**

ORDER

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19.10.2019

I.A.No. 2163/2019 under Order 11 Rule 4 (3) & (7) CPC as amended by The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 r/w Order 12 Rule 2A and Section 151 CPC for dispensing with the proof of the documents filed by the petitioner herein qua respondent no.2 to 4, and declaring the documents filed by the petitioner herein deemed to be admitted qua respondent no.2 to 4 and further appropriate order(s)

By way of present order, I shall dispose of application of the petitioner under Order 11 Rule 4 (3) & (7) CPC as amended by The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 r/w Order 12 Rule 2A and Section 151 CPC. In the present application, the petitioner has prayed that an appropriate order be passed thereby dispensing with the proof of the

documents filed by the petitioner qua the respondent no.2 to 4 and consequently, an appropriate order be passed thereby declaring the documents filed by the petitioner are deemed to be admitted qua the respondent no.2 to 4.

Brief facts necessary for just adjudication of the present application, as stated in the application, are that vide order dated 18/09/2018, the parties were directed to file fresh affidavits of admission/denial of the documents in terms of the Delhi High Court (Original Side) Rules, 2018 and the petitioner has filed his fresh affidavit of admission/denial of the documents. Respondent no.2 to 4 have also filed affidavit of admission/denial of the documents vide Index dated 12/12/2018. Perusal of affidavit of admission/denial of the documents filed by the Respondent no.2 to 4 would reveal that the same is not in conformity with Order 11 Rule 4 (2) Code of the Civil Procedure (hereinafter referred to as "CPC") as amended by The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (hereinafter referred to as "Act") made applicable in terms of Delhi High Court (Original Side) Rules, 2018. Affidavit of admission/denial of the documents filed by the respondent no.2 to 4 sets out bare and unsupported denial of the documents filed by the petitioner and same is an abuse to the judicial process in as much as the respondent no.2 to 4 have unduly refused to admit the documents filed by the petitioner and have deliberately failed to adhere to the Order 11 Rule 4 (2) CPC as amended by the Act. However, it is the case of the petitioner that the respondent no.2 to 4 have specific knowledge of various documents filed by the

petitioner. The respondent no.2 to 4 being the beneficiaries under WILL dated 13/01/1987 have deliberately refused to admit the documents. The deliberate refusal and/or bare and unsupported denial defeat the entire purpose of carrying out the admission/denial. It would be in the fitness of things, if the proof of the documents filed by the petitioner qua the respondent no.2 to 4 is dispensed with as affidavit of admission/denial is not in conformity with Order 11 Rule 4 (2) CPC as amended by the Act. As per Chapter VII Rule 3, 6 & 7 of the Delhi High Court (Original Side) Rules which mandatorily state that the affidavit of admission/denial has to be in conformity with Order 11 Rule 4 CPC as amended by the Act. The documents, which are not specifically denied by the parties to the proceedings, would deem to be admitted in terms of Order 12 Rule 2A CPC. Thus, the documents filed by the petitioner are declared deemed to be admitted qua the respondent no.2 to 4. The respondent no.2 to 4 are also liable to be burdened with exemplary cost on the ground of unduly refusing to admit the documents filed by the petitioner.

Counsel for the petitioner, in support of his contentions, has relied upon the judgments titled as “*Burger King Corporation V. Techchand Shewakramani & Ors.* (CS (COMM) 919/2016 & CC (COMM) 122/2017 dated 27/08/2018) **and** “*Unilin Beheer B.V. Vs. Balaji Action Buildwell*” (CS (COMM) 1683/2016 & CC (COMM) 38/2018 dated 15/05/2019).

The respondent no.2 to 4 have contested the present application by filing detailed reply wherein they denied the contents of the

application of the petitioner and prayed for dismissal of the same with cost.

On 12/02/2019, it was submitted by counsel for the respondent no.5 & 6 that he does not wish to file reply of the aforesaid application and has no objection, if the aforesaid application is allowed.

Arguments already heard on the aforesaid application of the petitioner. Perused the material available on record.

The present case is a Testamentary case filed by the petitioner under Section 276 of the Indian Succession Act, 1925 for grant of Probate in respect of WILL dated 13/01/1987 of Mrs. Surinder Kaur. By way of present application, the petitioner has prayed that an appropriate order be passed thereby dispensing with the proof of the document filed by the petitioner qua the respondent no.2 to 4 and consequently, an appropriate order be passed thereby declaring the documents filed by the petitioner are deemed to be admitted qua the respondent no.2 to 4.

In the present case, issues were framed vide order dated 06/01/2017. In the present case, PW-1 has already been examined by the petitioner.

On 27/09/2019, it was submitted by counsel for the respondent no.2 to 4 that though the respondent no.2 to 4 have denied the documents mentioned at serial no. 51, 52, 53 & 61 in affidavit of admission/denial of the documents of the respondent no. 2 to 4, however, the respondent no.2 to 4 are also admitting the aforesaid

documents at serial no. 51, 52, 53 & 61 apart from the other documents as mentioned in the affidavit of admission/denial of the documents.

It is contention of the petitioner that the affidavit of admission/denial of the documents, filed by the respondent no.2 to 4, is not in conformity with Order 11 Rule 4 (2), (3) & (7) CPC as amended by The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. Admittedly, the present case is a Testamentary case and not a Commercial Suit under the provisions of The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. Hence, the provisions of the Act are not applicable in respect of admission/denial of the documents. Since the present case is a Testamentary case, the provisions of Delhi High Court (Original Side) Rules, 2018 are applicable for the purpose of admission/denial of the documents. In view of the same, the aforesaid contention of the petitioner is not tenable.

There is no prescribed format for affidavit of admission/denial of the documents either in the CPC or in Delhi High Court (Original Side) Rules, 2018. However, as per Rule 8 of Chapter VII of Delhi High Court (Original Side) Rules, 2018 cost can be imposed upon a party where any party, without just reason or cause, denies a document, which the party propounding is compelled to prove. Hence, as per Delhi High Court (Original Side) Rules, 2018, a party has to give just reason or cause for denial of any document of the opposite party.

It is also the contention of the petitioner that the documents of the petitioner have not been specifically denied by the respondent no.2 to 4 and the documents of the petitioner are deemed to be admitted in terms of Order 12 Rule 2A CPC. On perusal of affidavit of admission/denial of the documents, filed by the respondent no.2 to 4, it is revealed that they have specifically denied the documents of the petitioner in their affidavit of admission/denial of the documents with reasons. In view of the same, the aforesaid contention of the petitioner is not tenable. Even otherwise, for the purpose of Order 12 Rule 2A CPC, serving of notice under Order 12 Rule 2 CPC upon the opposite party is mandatory. There is nothing on record to show that a notice under Order 12 Rule 2 CPC was served by the petitioner upon the respondent no.2 to 4 to admit his documents.

In the present case, admission/denial of the documents has already been conducted by the petitioner and the petitioner has admitted 5 documents of the respondents and the same have already been exhibited as Ex. D-1 to Ex. D-5.

Marking/exhibition is yet to be put upon the documents of the petitioner on the basis of affidavit of admission/denial of the documents, filed by the respondent no.2 to 4. In view of the same, the present application is pre-mature.

There is no dispute in respect of the law as laid down by the Hon'ble Delhi High Court in *Burger King Corporation (supra)* **and** *Unilin Beheer B.V. (supra)*, however, the aforesaid judgments are not applicable to the facts and circumstances of the present case as both

the aforesaid judgments discussed the law relating to the admission/denial of the documents in respect of commercial suits only.

Considering the facts, circumstances and in view of the submissions made, the aforesaid application of the petitioner is dismissed. No order as to costs.

IA stands disposed of.

I.A.No.10305/2019 under Order 16 Rule 1 (3) r/w Section 151 CPC filed on behalf of the petitioner for seeking to additionally examine witnesses other than those previously mentioned in the list of witnesses dated 13/02/2017 and I.A.No.10304/2019 under Section 151 CPC filed on behalf of the respondent no.2 to 4 seeking condonation of delay in filing the list of witnesses

At request, the aforesaid application be kept pending till the next date of hearing.

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In terms of affidavit of admission/denial of the documents and submissions made by counsel for the respondent no.2 to 4 on 27/09/2019, the respondent no.2 to 4 have admitted 13 documents of the petitioner. The same are Ex. P-1 to Ex. P-13. Remaining documents have been denied by the respondent no.2 to 4.

In terms of order dated 05/07/2019, the present matter be placed before the Hon'ble Court for further directions on **01st November, 2019.**

**VIJAY SHANKAR (DHJS)
JOINT REGISTRAR (JUDICIAL)**

OCTOBER 19, 2019_{/nk}