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

+ **CS(OS) 3644/2014**

BHUMITRA JINDAL & ANR

..... Plaintiffs

Through: Mr. Sudhir Nandrajog, Senior Advocate with Mr. Pramod Dayal, Mr. Nikunj Dayal and Mr. Rakesh Kumar, Advocates.

versus

BRAHAM TEJ MITTAL & ANR

..... Defendants

Through: Mr. Arvind Dua, Advocate for D-2.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

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01.04.2022

I.A. No.16044/2021 (for condonation of delay in filing)

1. For the reasons stated in the application, the same is allowed.

I.A. No.16043/2021 (u/O-VI R-17) & I.A. No.16045/2021 (u/O-VIII R-1A)

2. I.A. No.16043/2021 has been filed on 24th November, 2021, seeking to amend the written statement filed on behalf of the applicant/defendant no.2.

3. I.A. No.16045/2021 has been filed under Order VIII Rule 1A read with Order XI Rule 14 of the Code of Civil Procedure, 1908 (CPC) for placing on record the additional documents.

4. Counsel for the applicant/defendant no.2 submits that the main document which has led to filing of the present applications is a written document dated 25th November, 1968 executed by the father of the plaintiffs



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and the defendants in terms of which the deceased father has put into the common hotchpotch of the joint Hindu Undivided Family (HUF), property bearing No.15/60, Punjabi Bagh, New Delhi-110026, which is one of the subject matters of the suit. It is further stated in the said document that the HUF would be comprising of the father as the *karta*, the mother Mrs. Ram Dulari and two defendants, who are the sons of the deceased father.

5. It is contended on behalf of the defendants that the aforesaid document came to the knowledge of the applicant only in November, 2020, when their neighbour, one Ashwani Sachdeva, who is the friend of their father, handed over this document to the applicant.

6. Another document sought to be placed on record is a photocopy of an affidavit executed by the plaintiff no.1.

7. Counsel for the defendants states that in view of the fact that these documents have now recently come to the knowledge of the applicants, they should be taken on record as they are essential documents for the adjudication of the present suit. The delay in filing the present applications is on account of the COVID-19 pandemic as the said document came to the knowledge of defendants when the pandemic was prevailing. Therefore, the present applications have been filed only in November, 2021.

8. Senior Counsel appearing on behalf of the non-applicants/plaintiffs states that:

- i. the applications have been filed at a highly belated stage when the plaintiffs' evidence has already been concluded.
- ii. the defendants are in continued occupation of the property and therefore, the applications have been filed to delay the proceedings in trial.



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- iii. the evidence in the present case is being recorded by the Local Commissioner at the expense of the plaintiffs and despite repeated opportunities granted to the defendant no.2, he has failed to file his affidavit of evidence.
 - iv. the father of the plaintiffs was the Chief Financial Official of a reputed company, therefore, there is no possibility of the father having executed the document dated 25th November, 1968, which is vague in nature.
 - v. In the affidavit of evidence filed on behalf of the defendant no.1 on 30th August, 2019, it has been stated that the aforesaid document dated 25th November, 1968 came to light on 8th January, 2012 at a family meeting in which the defendant no.2 was present. Therefore, it is wrong to state that the document came into the knowledge of the defendant no.2 only in November, 2020. This document has been deliberately filed at a belated stage as the neighbour who is alleged to have handed over this document to the applicant expired in December, 2020.
 - vi. it is inexplicable how such a document would be kept by the father of the defendants with a neighbour.
 - vii. there was no necessity to execute a document of this nature as in any case, the daughters could not be a part of the HUF in 1968.
9. I have heard the counsels for the parties.
10. It is an admitted position that the evidence of the plaintiffs has already been completed in this case in 2019 and the defendant no.1 closed his evidence on 23rd December, 2021. Clearly, the aforesaid applications have



been filed at a very belated stage, when the matter was at the stage of evidence of the defendant no.2.

11. The explanation given on behalf of the applicants that the aforesaid document came to light of the applicants only in November, 2020 does not inspire confidence in view of the affidavit filed on behalf of the defendant no.1 that the aforesaid document came to the light in as far back in January, 2012, as stated in paragraph 15 of the affidavit.

12. The mandate of Order VI Rule 17 of the CPC is quite clear and the law in this regard is settled, that at a stage prior to commencement of trial, the Court adopts a liberal approach in allowing amendments of the pleadings. However, in terms of the proviso of Order VI Rule 17 of the CPC, once the trial has commenced, the Court can allow amendment only if the Court comes to the conclusion that despite due diligence, the parties could not have filed for amendment earlier.

13. Even under Order VIII Rule 1A of the CPC, a duty is cast upon the defendant to file all the documents relied upon along with the written statement. Documents can only be allowed to be filed at a belated stage if the defendant can demonstrate that despite exercise of due diligence, the said documents were not within the knowledge of the defendant or could not have been produced earlier. In this regard, reference may be made to the judgment of this Court in **Manohar Lal v. Tara Chand**, 2021 SCC OnLine Del 5228.

14. It is also an admitted position that the defendants are in occupation of the suit property and it is borne out from the record that repeated opportunities have been given to the defendants to file list of witnesses and affidavits of evidence and the same has not been filed by the applicants.



Therefore, in my view, the filing of the present applications seems to be only dilatory tactics adopted on the part of the defendants to delay the trial in the suit.

15. There is also merit in the contention made on behalf of the plaintiffs that the aforesaid document does not inspire confidence. In the year 1968, the daughters could not have been a part of the HUF. Therefore, it is inexplicable as to why would a person like the plaintiffs' father, who was working as CFO, execute such a document specifically to execute the daughters from the HUF. In any case, the membership of the HUF is on account of birth and a person cannot be specifically included or excluded from the membership of HUF. Furthermore, even if such a document was executed, it defies logic as to why the document would be kept in the custody of a neighbour.

16. In view of the above, I do not find any merit in both the present applications.

Dismissed.

CS(OS) 3644/2014

17. Counsels to approach the Local Commissioner for fixing dates of the recording of the remaining evidence.

18. List before the Joint Registrar on 20th July, 2022.

AMIT BANSAL, J.

APRIL 1, 2022

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