



2025:DHC:6339



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of Decision: 29th July, 2025***
+ **CM(M) 3111/2024 & CM APPL. 44452/2024**

VINOD GUPTA

.....Petitioner

Through: Mr. Krishan Bhardwaj, Advocate.

versus

M/S B K TRADERS

.....Respondent

Through: Mr. Mudit Sood with Mr. Udit Grover,
Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is defending a commercial suit.
2. Defendant-Mr. Vinod Gupta (petitioner herein) entered into witness box on 22.03.2024. He made reference to his affidavit submitted towards *examination-in-chief* and was tendered for cross-examination same day.
3. The Court has gone through his affidavit sworn on 18.03.2024. Unfortunately, this affidavit does not make reference to any document as such.
4. However, when Mr. Vinod Gupta entered into witness box and deposed about the abovesaid affidavit in his *examination-in-chief*, he deposed as under:-

"I tender in evidence, my examination-in-chief by way of affidavit Ex. DW1/A. The contents of same are well within my knowledge and are correct and it bears my signatures at Points



A and B. I rely upon the documents which are already Ex. PW1/1 to Ex. PW1/9.”

(emphasis supplied)

5. The said witness, for the reasons best known to him, made reference to documents filed by his adversary and deposed that he relied upon documents which had been already proved as Ex.PW1/1 to Ex. PW1/9

6. On that day i.e. 22.03.2024, the defendant was present in the Court with his two counsel and nothing was pointed out to the learned Trial Court, by his counsel and the witness was tendered in evidence and as noted already, the witness did not make reference to his own documents, and, thereafter, he was discharged, after due cross-examination from the side of the plaintiff.

7. Later on, an application was moved by the defendant under Order XVIII Rule 17 CPC in which it was claimed that the defendant could not make reference to his own documents on account of inadvertent error of his previous counsel and on account of some oversight, he rather made reference to the documents filed by the plaintiff, instead of referring to his own documents. It was in the abovesaid backdrop, that he moved abovesaid application seeking indulgence of the Court to recall DW-1 to enter into witness box and to exhibit the documents relied upon by him, which were already on record.

8. Learned Trial Court *vide* impugned order dated 31.05.2024 has declined to accede to such request while observing that the defendant is taking a u-turn from his earlier stand and thereby retracting from the admission made by him.

9. Quite evidently, such conclusion could have been drawn on the basis of one line, in isolation and to reach any such conclusion, the entire stand was required to be appreciated in the backdrop of the respective pleadings.



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10. When asked, learned Counsel for the respondent/plaintiff admitted that the claim of the plaintiff was never admitted by the defendant in his written statement.

11. The Court has also gone through the *affidavit of admission/denial of documents* and in such affidavit, sworn on 17.03.2021, the same very witness i.e. defendant-Mr. Vinod Gupta, has, rather, denied all the documents, except one legal notice dated 06.11.2017 and its corresponding reply.

12. In such a situation, it was not expected that defendant would admit the documents of his adversary which he had already denied in his said affidavit i.e. *affidavit of admission/denial of documents*.

13. Quite possibly, he wanted to make reference to his own documents which he had, as averred, filed along with the written statement and on account of inadvertence or over-enthusiasm, the abovesaid documents were not referred to and were not mentioned when defendant-Mr. Vinod Gupta entered into witness box.

14. Realising it such mistake, the defendant moved the abovesaid application, which has been dismissed by learned Trial Court.

15. The fact of the matter is that it cannot be deduced that there was any admission coming from the side of the defendant. He, perhaps, wanted to refer to and rely upon his documents and on account of sheer inadvertent error, he made reference to the documents filed by his adversary and in such a peculiar situation and in order to make things amply clear, it was rather appropriate for the learned Trial Court to have allowed the abovesaid application moved by defendant under Order XVIII Rule 17 CPC whereby the said witness wanted to enter into witness box to clarify the things and also to exhibit his own documents, already relied upon by him.



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16. The next date before the learned Trial Court is stated to be 06.08.2025.
17. Keeping in mind the overall facts of the case, the present petition is hereby allowed and DW-1 Mr. Vinod Gupta is permitted to enter into witness box to clarify the abovesaid aspect and to make reference to his own documents, on which he intended to rely upon.
18. However, it is clarified that under no circumstance, defendant would be permitted to make reference to any document, which is yet not part of record.
19. For causing delay in the matter and for making the deposition before the Court in a careless manner, the defendant is burdened with cost of Rs. 30,000/- which shall be paid to the plaintiff on the next date of hearing before the learned Trial Court.
20. It is also clarified that for the abovesaid purpose, the defendant shall be entitled to only one, *albeit*, effective opportunity and under no circumstance, he would be given any further opportunity.
21. Petition stands disposed of in aforesaid terms.
22. Pending application also stands disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

JULY 29, 2025/sw