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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 30th April, 2025

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CM(M) 794/2025 & CM APPL. 25857-25860/2025

TANISH ENTERPRISES THROUGH ITS PROPRIETOR SMT MAMTA
ARORAPetitioner

Through: Mr. Sushant Sagar, Ms. S. Bhatia and
versus

PUNJAB NATIONAL BANKRespondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is defending a Commercial Suit which seeks recovery of Rs.12,33,557/- with interest.
2. After completion of pleading and framing of issues, both the sides led their respective evidence.
3. The plaintiff also examined its witnesses including one Mr. Saubhagya Saxena. Thereafter, the defendants also examined their witnesses and their evidence was also closed on 12.12.2024.
4. When the case was at the stage of final arguments, one application was filed by the plaintiff under Order XVI Rule 1 and under Order XVIII Rule 17 read with Section 151 CPC seeking permission to examine Ms. Durgawati Kumari. She also happens to be authorized representative of the plaintiff bank and is the one who had signed and filed the suit as such AR of the plaintiff bank. It was submitted therein that due to some inadvertent omission, she could not be examined and, therefore, she may be permitted to enter into witness box for effective and appropriate disposal of the suit in question.
5. Such application has been allowed by the learned Trial Court *vide* order dated 21.04.2025 and the defendant has taken exception to the abovesaid order.
6. Mr. Sushant Sagar, learned counsel for the petitioner submits that the learned



Trial Court should not have given any indulgence to the plaintiff as the attempt of the plaintiff bank was, merely, to fill up the lacuna which is neither appropriate nor permissible.

7. It is submitted that after the case was put to plaintiff's evidence, there was no one to prevent the plaintiff bank to have called her in the witness box and when the case had already reached at the stage of final arguments, an attempt is being made to examine her to fill up the lacuna. He also submits that such request, even otherwise, is not entertainable under the abovesaid provisions of law i.e. Order XVI Rule 1 and Order XVIII Rule 17 CPC.

8. The copy of the plaint and written statement has also been annexed with the petition.

9. The plaint has been filed by the plaintiff bank through its said authorized representative Ms. Durgawati Kumari and in her affidavit, in support of the suit, she has mentioned that she is authorized representative of the plaintiff bank and is fully conversant with the facts of the case and she is duly empowered and competent to sworn and affirm such affidavit.

10. However such assertion has been resisted by the defendant as in their written statement, they have, very categorically, denied such authorization in her favour or her competence to file the present Commercial Suit.

11. It, generally, happens that with the transfer of any such bank employee from one bank to the other, the bank may seek to prove the averments through some other representative, provided such other representative is also conversant with the facts.

12. Admittedly, the testimony which is hearsay in nature can neither be led nor can be accepted.

13. The plaintiff bank examined one Mr. Saxena in support of their suit and when he was cross-examined, in response to a question put by the defendant, he submitted that he had not worked with Ms. Durgawati Kumari ever and, therefore, he could not identify her signatures.



14. It seems that in order to clearly demonstrate that the suit has been instituted by an authorized person, the plaintiff bank seeks permission to examine such authorized representative, who has filed the suit. The aspect of the competency and authorization in her favour goes to the root of the matter also for the reason, that her such authorization has been disputed by the defendant.

15. In view of the above, it rather seems that her examination is imperative in nature.

16. Any such Civil Court has ample power to permit any of the parties, be it plaintiff or defendant for that matter, to examine any such witness, whose name did not figure in the initial list of witnesses and certainly, the endeavour of the plaintiff bank cannot be said to be actuated with any *mala fide* one or for that matter an attempt to fill up any lacuna.

17. Order XVI Rule 1 (3) CPC clearly provides that *the Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.*

18. Finding no illegality or perversity in the impugned order, this Court does not find any reason to invoke its supervisory powers under Article 227 of Constitution of India.

19. The petition is accordingly dismissed.

20. Pending application, if any, stands disposed of.

(MANOJ JAIN)
JUDGE

APRIL 30, 2025/ss/js