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CS No. 3047/16

ANU JAIN Vs. ANIL GHAI ETC.

26.04.2025

Present : Sh. Vinay Kumar Mishra, Sh. Anand Nagar and Ms. Sabi Gupta, Ld. Counsel for the plaintiff.
Sh. Amit Kumar and Sh. Ashish Verma, Ld.
Counsel for the LR's of deceased defendant no. 1 and
for defendant no.2 alongwith defendant no. 2.

1. Reply to the application under Order XVI Rule 3 has been filed on behalf of the defendants on 04.04.2025. Copy supplied.
2. An application under Section 151 of CPC has been filed on behalf of the defendants on 04.04.2025 for striking off certain documents in the evidence by way of affidavit of PW-2 being beyond pleadings. Copy already supplied.
3. Today, reply to the application of defendants under Section 151 CPC praying to strike off part of the evidence affidavit of PW-2 beyond pleading of the amended plaint, filed on behalf of the plaintiff. Copy supplied.
4. Today, application under Order XXXVIII Rule 5 r/w Section 151 CPC also filed on behalf of the plaintiff. Copy supplied.
5. Arguments addressed on application under Order XVI Rule 3 CPC and on application under order 151 CPC.
6. It is stated on behalf of the plaintiff that agreement to sell dated 15.10.2011 was entered by the defendants in favour of the plaintiff but inadvertently as original documents were earlier not

filed therefore, the attesting witnesses, do not find mention in the list of witnesses and the attesting witnesses to the said agreement to sell are essential for proving the said agreement to sell.

7. It is further stated on behalf of the plaintiff that plaintiff also wishes summons previous counsel for plaintiff as well as defendants who issued legal notices and reply thereof.

8. It is further stated that plaintiff also wishes to summons witness from M/s Gardenia India Pvt. Ltd. with the record of pending dues regarding Flat no. 102 first floor, Gardenia Glamour, Vasundhara, Ghaziabad, U.P.

9. It is further stated on behalf of the plaintiff that plaintiff wishes to summon witness from Bank of Baroda, Gandhi Nagar, Delhi to bring the record of banker's cheque bearing no. 639403 dated 22.12.2021 drawn on Bank of Baroda, Gandhi Nagar, Delhi as well as witnesses from recovery branch of ICICI Bank, Virat Tower, Green Park Extension, New Delhi regarding offer letter no. 10225459 dated 27.11.2020 in favour of the defendants no. 1 and 2 for offering loan facility for loan amount of Rs. 10 lakhs.

10. It is further submitted that plaintiff also wishes to witness from department of India Post with the record of cash receipt of the Telegram sent by the plaintiff to defendants no. 1 and 2 and official from PS Shakarpur in relation to record of DD entry no. 50B dated 20.12.2011, DD no. 72B dated 30.12.2011 and DD no. 64B dated 03.01.2012.

11. It is prayed on behalf of the plaintiff that application may be allowed and the witnesses mentioned in the application may be summoned alongwith relevant record for proving the case the case of the plaintiff.

12. Reply to the present application has been filed on behalf of the defendants. It is submitted on behalf of the defendants that witnesses sought to be summoned by the plaintiff are nowhere mentioned in the list of witnesses earlier filed before this court and therefore, could not be directly summoned without seeking prior leave of the court or amendment to the list of witnesses already filed; that list of witnesses are to be filed within 15 days after framing of the issues and plaintiff cannot seek to summon new witnesses at such belated stage as issues were framed long back on 31.10.2017 and now PW-1/ plaintiff has been cross-examined; that no explanation has been given by the plaintiff as to why the said witnesses were earlier not incorporated in the list of witnesses and why the same are being introduced after such delay. In view of these submissions, it is prayed that application may be dismissed with heavy cost.

13. Submissions heard. Record perused.

14. It is seen that application has been filed under Order XVI Rule 3 of CPC and when it is pointed out to the Ld. counsel for the plaintiff that application has been filed under wrong provision of law, he requested that said application may be treated as application under Order XVI Rule 1 (3) of CPC. In view of

submissions, abovesaid application is treated as application under Order XVI Rule 1 (3) of CPC.

15. It is seen that the testimony of additional witnesses sought to be summoned by the plaintiff appears to be relevant to the adjudication of the controversy in the present matter and examination of said witnesses is also necessary in view of certain objections raised by the defendants during evidence of PW-1. Further, testimony of the witnesses as mentioned in the application, who the plaintiff seeks to summon is necessary for proper adjudication of case and deciding the issues in the present matter. Under Order XVI Rule 1 (3) of CPC, the court has been given ample power to permit any party to summon any witness other than the witness mentioned in the list referred to in Order XVI Rule 1 of CPC. Furthermore, no prejudice shall be caused to the defendants. The defendants shall have full opportunity to cross examine additional witnesses which the plaintiff seeks to examine to prove the abovesaid document.

16. Therefore, considering the totality of facts and circumstances of the case and in the larger interest of justice, **instant application treated as application under Order XVI Rule 1 (3) of CPC stands allowed** and the plaintiff is permitted to examine the witnesses as mentioned in the application. Plaintiff is directed to file amended list of witnesses with advance copy to the defendants.

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17. Put up clarification / order on application under Section 151 of CPC and reply and arguments on application under Order XXXVIII Rule 5 r/w Section 151 CPC and remaining PE on **06.05.2025 at 2:30 PM.**

(SOMITRA KUMAR)
DJ-06, EAST/ KKD COURTS
DELHI/26.04.2025 ^(R)