

**CS no.58565/16**

**Meenakshi Debey VS Pankaj Aggarwal & Anr.**

**23.03.2018**

Present: Ld. Counsel for plaintiff.

Ld. Counsel Sh. Mayank Goel and Sh. Momanshel

Maring for defendant.

Arguments heard on the application u/O 15 rule 3 CPC read with Section 135 of Evidence Act to direct the defendants to appear in person in the witness box before calling any other witness. The same is not objected by Ld counsel for defendant. Hence application is allowed. Defendants are directed to appear in witness box first before summoning any other witness.

Evidence by way of affidavit may be given to plaintiff within two months.

Arguments heard on the application u/O 137 and 138 CPC read Section 151 CPC thereby seeking permission for re-examination of PW5 for clarification regarding the question no.8 which was put to the hand writing expert PW5 in cross-examination.

The same is objected by Ld counsel for defendant thereby submitting that this question was put to the witness on 15.12.2017 and this witness was also again examined on 16.12.2017. Thereafter PE was closed and now the matter is fixed for defendant's evidence since February 2018.

It is also submitted that once defendant's evidence has commenced, the application may not be allowed and also the present

Contd...2/-

application is annexed with 'affidavit; of plaintiff only wherein it is mentioned that the said witness did not understand the question which is put to him. Ld. Counsel for defendant placed reliance on judgment title 'Ajendra Prasadji N. Pandey and Swami Keshavprakeshdasji N. & Ors', (2006) 12 SCC I.

I have heard both the parties and gone through the record.

Though it is correct that the matter is listed for DE but defendant's evidence has not even started. But it is also correct that the said witness was cross examined on the next date of hearing also, after which PE was closed i.e on 16.12.2017. Now this application is moved almost after three months.

However, considering the ground mentioned in the application that in the said question no.8, two different sets of sentences were separated by coma and the said answer appears more to be towards the last sentence thereby giving incorrect impression in the sentence that witness has been hired for only giving the desired opinion and is accordingly prayed for that for the purpose of seeking explanation/clarification from this witness, the present application has been moved. Since the hand writing expert PW5 in this case is a material witness, such an inference if left unallowed may shatter the whole case of plaintiff.

Plaintiff has moved this application at this stage. Though it is filed after three months but considering the case of plaintiff, I hereby allowed this application subject to cost of Rs. 3,000/- to be

Contd..3/-

paid to the defendant on the date when the witness shall be called for clarification. However this witness shall be called for clarification after the whole defendant's evidence is over. Further the only question asked will be regarding clarification with respect to the question no.8 which was put to this witness.

In the circumstances, put up for arguments on **16.08.2018**.

Earlier date 19.05.2018 stands canceled.

**(Twinkle Wadhwa)**  
**ADJ-03/PHC/NEW DELHI.**  
**23.03.2018**