

CS 58565/16

MEENAKSHI DUBEY Vs. PANKAJ AGGARWAL

23.11.2022

Present: Sh. Pushkar Sood, Ld counsel for the plaintiff.
Sh. Rajesh Gupta, Ld counsel for the defendant no.1.

Considered the last orders.

Copy of the application has been filed by Ld counsel for the defendant.

Put up for orders at 4 pm on both the pending applications.

(Gaurav Rao)
Additional District Judge-03
Patiala House Courts, New Delhi
23.11.2022

At 4 pm

Present: None.

Two applications are pending on record. One is u/s 151 CPC moved by the plaintiff seeking certain directions to defendant no. 1/DW-1. The other application also u/s 151 CPC has been filed by the defendant seeking recall of order dated 18.09.2021.

Vide order dated 18.09.2021 the DE was closed by Ld Predecessor of this court. This was on account of failure on part of the defendant to lead DE despite numerous opportunities.

Contd.....2/-

In fact Ld counsel for defendant no. 1 had sought discharge as defendant no. 1 was not contacting him, not giving him instructions as is reflected in proceedings dated 30.03.2021. It is claimed in the application that defendant no. 1 could not contact his counsel because of ill health. There is no accompanying documents along with the application to substantiate the said claim. The last cross-examination of defendant no. 1 took place on 28.12.2019 and it is a matter of fact that thereafter Covid-19 pandemic hit the entire world. The lockdown which ensued restricted the court functioning and hampered the trial of the matters apart from restriction of air travel etc. It is also a matter of fact that defendant no. 1 has already been subjected to a detailed and lengthy cross-examination and already around 190 questions have been put to him. Furthermore, defendant had to take two trips to India, as he is residing in Canada, for recording of his evidence/cross examination. During the course of the arguments on the application, it was informed by the Ld counsel for the defendant no. 1 that defendant no. 1 shall be available for cross-examination from 10th to 17th December, 2022 as he is traveling to India and which dates are also comfortable with Ld counsel for the plaintiff. Considering the overall facts and circumstances of the case, to give defendant a reasonable opportunity to putforth the best defence, an opportunity to defend the present litigation and for proper adjudication of the dispute/controversy at hand, the application moved by the defendant no. 1 stands allowed. Order dated 18.09.2021 stands recalled. Relist the matter for DE before the Ld Local

Commissioner. Parties are directed to contact the Ld Local Commissioner immediately and take dates for recording of evidence for/from 10.12.2022 onwards. However, considering the fact that matter is pending at the stage of DE since October 2017, as PE was closed on 12.09.2017 as well as for failure on the part of defendant no. 1 to give proper instructions to his counsel which has indeed delayed the trial considerably, the defendant no. 1 is burdened with the cost of Rs. 15,000/-. Out of the said cost, Rs. 10,000/- shall be paid to the plaintiff and Rs. 5,000/- to the Ld Local Commissioner. Application stands disposed of accordingly.

As far as plaintiff's application is concerned, I have considered the application as well as gone through the cross-examination of defendant no. 1/DW-1. Suffice would be to say that if defendant no. 1 refuses to answer questions put to him during his cross-examination, including question no. 145 and 157 already put to him necessary consequences, in the form of adverse inference if any shall follow. However, the witness cannot be compelled to answer a question he does not wish to answer. Accordingly, the application stands disposed of with the above observations. Nonetheless it is expected that Ld counsel for the plaintiff shall not repeat the questions, already put to the witness more so after rephrasing them and that cross examination of DW-1 shall be concluded at the earliest as he has already been cross examined at great length.

After DW-1 has been examined and discharged, defendants shall lead and conclude the evidence before the Ld Local Commissioner.

Contd.....4/-

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Relist the matter for report of Ld Local
Commissioner/final arguments now on **27.02.2023**.

(Gaurav Rao)
Additional District Judge-03
Patiala House Courts, New Delhi
23.11.2022