

**IN THE COURT OF MS. MANU VEDWAN,
ADDITIONAL DISTRICT JUDGE-2, NORTH EAST
DISTRICT, KARKARDOOMA COURTS, DELHI**

CS No. 83/2016

Vandana Srivastava

....Plaintiff

Versus

Neetu Jain & Anr.

.... Defendants

10.08.2023

**ORDER ON APPLICATION UNDER ORDER XVIII RULE 2
READ WITH SECTION 114 & 151 CPC MOVED ON
BEHALF OF DEFENDANT NUMBER 1.**

1. Vide this order, I shall dispose of an application under Order XVIII Rule 2 read with section 114 & 151 CPC moved on behalf of defendant number 1 for recalling of order dated 11.04.2018 and permission to defendant number 1 to withdraw her affidavit of evidence and to file afresh after the conclusion of the plaintiff's evidence.

2. It is stated in the application that pursuant to order dated 11.04.2018, defendant number 1 had to file her affidavit of evidence

though the plaintiff's evidence was yet to be completed. It is further stated that plaintiff was expected to begin the evidence and only thereafter, defence evidence was expected to commence. The onus of discharge of issues is on the plaintiff and the defendants cannot be asked or directed to file the affidavit of evidence prior to the conclusion of plaintiff's evidence. It is further stated that the defendant number 1 can very well file the affidavit of evidence after the conclusion of plaintiff's evidence and that too on the issues of which either the onus is on the defendant number 1 or she failed to rebut the onus during the cross examination of PWs. It is further stated that after grant of permission to defendant number 1 to file the subsequent documents, vide order, dated 04.06.2022, a fresh affidavit of evidence is required to be filed and the earlier affidavit stands infructuous. It is therefore requested that defendant number 1 may be permitted to withdraw her affidavit of evidence till the conclusion of plaintiff's evidence with liberty to file thereafter.

3. Reply has been filed on behalf of plaintiff to the abovesaid application of defendant number 1 in which it is stated by Ld. Counsel for plaintiff that the present application, dated 20.12.2022, has been filed after the judgment of Ld. Additional Sessions Judge-Special Fast Track Court in the FIR No. 44/2014, PS Shalimar Bagh, State vs. Anil Arivastava and Anr, North West District, Rohini Courts, Delhi. The evidence by way of affidavit dated 03.08.2018 contains all the false allegations against the plaintiff and her husband which she has stated in her complaint under section 376 of

Indian Penal Code which was later registered as FIR No. 44/2014. Now after the expiry of more than four years the defendant number 1 wants to withdraw her evidence by way of affidavit just to save herself from case of perjury under section 340 of Criminal Procedure Code. It is further stated that while passing the judgment in the FIR No. 44/2014, there was special remarks by the Ld. Judge that the defendant number 1 (therein complainant) has gone to all the extent to implicate the plaintiff and her husband in false case of rape. The defendant number 1 had filed various cases in different Courts and also grabbed the suit property under the threat of rape case. It is further stated that the defendant number 1 was having the sufficient time to file her objection regarding the abovesaid order, but, on the contrary the defendant number 1 complied the said order and evidence by way of affidavit was duly attested and filed. It is further stated that in the application there is no reason stated for the withdrawal of the evidence by way of affidavit nor there are any proposed changes. It is therefore requested that the application of defendant number 1 be dismissed.

4. Arguments on behalf of both the parties have been heard. Application is also perused carefully. During the course of arguments, it is submitted by Ld. Counsel for plaintiff that the liberty may be granted to the defendant number 1 within four contours of law.

5. Keeping in view the submissions of defendant number 1 as

well as in light of Code of Civil Procedure and Indian Evidence Act, for the sole purpose of forwarding/advancement of justice and in light of no objection of plaintiff, defendant number 1 is at liberty to file the affidavit of evidence at an appropriate stage incorporating subsequent relevant events. Application is accordingly disposed of.

(Manu Vedwan)
ADJ-02/North-East, KKD Courts,
Delhi/10.08.2023