

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

CS No. 83/2016

**Vandana Srivastava**

**.... Plaintiff**

**Versus**

**Neetu Jain & Anr.**

**.... Defendants**

02.08.2024

**ORDERS ON APPLICATIONS THAT ARE APPLICATION UNDER SECTION 114 READ WITH ORDER XLVII RULE 1 AND SECTION 151 OF CODE OF CIVIL PROCEDURE AND APPLICATION UNDER ORDER XVIII RULE 2 READ WITH SECTION 114 AND SECTION 151 OF CODE OF CODE OF CIVIL PROCEDURE, MOVED ON BEHALF OF DEFENDANT NUMBER 1.**

1. Vide this common order, I shall dispose of two applications that are application filed under section 114 read with Order XLVII Rule 1 and section 151 of Code of Civil Procedure for recalling of order, dated 08.04.2024 moved on behalf of defendant number 1 and application filed under Order XVIII Rule 2 read with section 114 and section 151 of Code of Civil Procedure 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 file afresh after the conclusion of plaintiff's evidence,

Both the abovesaid applications are being taken up together for disposal having interconnected issues/facts.

2. To start with, firstly, defendant number 1 had moved an application under Order XVIII Rule 2 read with section 114 and 151 of Code of Civil Procedure for recalling of order, dated 11.04.2018 and request for granting the permission to defendant number 1 to withdraw her evidence and file afresh affidavit after the conclusion of plaintiff's evidence. It is stated in the application that in accordance with the order dated 11.04.2018, defendant number 1 had to file her affidavit of evidence, though the plaintiff's evidence was yet to commence. It is stated that the plaintiff was expected to begin the evidence after framing of issues and only after the conclusion of plaintiff's evidence, defendant's evidence would start. It is further stated that onus was on the plaintiff and defendant cannot be asked/directed to file the affidavit of evidence prior to the conclusion of plaintiff's evidence. It is stated that it is also found mentioned in Order XVIII Rule 1 & 2 of Code of Civil Procedure that plaintiff has to lead evidence first. It is stated that the onus on defendant is basically to rebut the evidence of plaintiff. It is further stated that moreover, after the grant of permission, 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 the defendant number 1 may be permitted to withdraw her affidavit of evidence till the conclusion of plaintiff's evidence with liberty to file afresh

thereafter otherwise defendant number 1 would be seriously prejudiced.

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 this application has been filed by defendant number 1 after the passing of judgment by Learned Sessions Judge-Special Fast Track Court in First Information Report bearing number 44/2014, Police Station Shalimar Bagh. It is stated that the evidence by way of affidavit, dated 03.08.2018, contains all the false allegations against the plaintiff and her husband which were also stated in the complaint filed under section 376 of Indian Penal Code and part of ingredients of First Information Report bearing number 44/2014. It is stated that after the expiry of more than four years, 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 First Information Report bearing number 44/2014, special remarks were made by the Learned Judge that the defendant number 1 (therein complainant) had gone to all the extent to implicate the plaintiff and her husband in false case of rape. It is further stated that the defendant number 1 had filed various cases in different Courts and 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 objections qua the order, dated 11.04.2018, but, on the contrary the

defendant number 1 complied the said order. It is stated that the defendant number 1 filed the evidence by way of affidavit which was duly attested. It is further stated that moreover in the entire application no reason is stated for the withdrawal of the evidence by way of affidavit nor are any proposed changes mentioned. It is therefore requested that the application of defendant number 1 be dismissed.

4. Thereafter, vide order dated 10.08.2023, the present application of defendant number 1 was allowed on the ground that the plaintiff had assented qua the grant of liberty to defendant number 1, within the broad contours of law. Relevant order is produced herein for the sake of brevity:-

***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.*

5. After, passing of aforesaid order, dated 10.08.2023, Learned Counsel for plaintiff has moved an application for correction/modification of order, dated 10.08.2023, thereby allowing the application under Order XVIII Rule 2 read with section 114 and 151 of Code of Civil Procedure filed by defendant number 1 under section 151 of Code of Civil Procedure. It is stated in the application filed by the plaintiff that on 10.08.2023, Learned Court has passed the order on the application of defendant number 1 filed under Order XVIII Rule 2 read with section 114 & 151 of Code of Civil Procedure in which it is noted down that in light of no objection of the plaintiff defendant number 1 is at liberty to file the affidavit of evidence at an appropriate stage. It is stated that some confusion has engulfed the court while, passing the order dated 10.08.2023, as plaintiff has never given no objection to that particular application of defendant of defendant number 1 qua which order was passed. It is further stated that plaintiff though had given no objection to the other application of the defendant for filing of the documents which was also pending and disposed off alongwith the aforesaid application. It is stated that plaintiff had already filed the reply to this particular application of the defendant number 1 filed under

Order XVIII Rule 2 of Code of Civil Procedure and there is no question of no objection given by the plaintiff. It is therefore requested that the order dated 10.08.2023 be modified to the extent to delete the words that plaintiff has no objection, otherwise, it would prejudice the case of the plaintiff. The present application is accompanied with the affidavit of plaintiff. However, no reply was filed by the defendant number 1. Thereafter, after hearing the arguments of both the parties at length, detailed order dated 08.04.2024 was passed. The relevant order dated 08.04.2024 is reproduced herein for the sake of brevity:-

**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**

**.... Defendant**

08.04.2024

**ORDER ON APPLICATION UNDER ORDER XVIII  
RULE 2 READ WITH SECTIONS 114 & 151 MOVED ON  
BEHALF OF PLAINTIFF.**

1. Vide this order, I shall dispose of application moved by plaintiff for correction/modification of the order dated 10.08.2023 passed allowing the application U/o XVIII Rule 2 r/w Sections 114 & 151 CPC filed by the defendant no. 1 U/s 151 of CPC.

2. It is stated in the abovesaid application by the plaintiff that on 10.08.2023, Learned Court has passed the order on the application of the defendant number 1 filed U/o 18 Rule 2 r/w Sec. 114 & 151 Code of Civil Procedure, in which it is noted down that in light of no objection of the plaintiff

defendant no. 1 is at liberty to file the affidavit of evidence at an appropriate stage. It is stated that some confusion has engulfed the court while, passing that order as plaintiff has never given no objection to that particular application of the defendant qua which order was passed. It is further stated that plaintiff though had given no objection to the other application of the defendant for filing of the documents which was also pending and disposed off alongwith the aforesaid application. It is stated that plaintiff had already filed the reply to this particular application of the defendant number 1 and there is no question of no objection given by the plaintiff. It is therefore requested that the order dated 10.08.2023 be modified to the extent to delete the words that plaintiff has no objection, otherwise, it would prejudice the case of the plaintiff.

3. On the other hand, Ld. Counsel for defendant number 1 specifically denied the contentions raised by the plaintiff through her present application and requested that the application be dismissed. It is stated by the defendant that in the garb of present application plaintiff seeking the review of the order dated 10.08.2023. It is further stated that in light of no error apparent on record the review can't be allowed. It is further stated that plaintiff can't be permitted to file an appeal in light of the following judgments that is AIR 1964 SC 1372 (*Thungbhadra Industries limiteda v. Government of Andhra Pradesh*), 2013 (8) SCC 320 (*Kamlesh Verma v. Mayawati*), 2013 (8) SCC 337 (*Union of India v. Sandur Manganese & Iron Ores limiteda*) and 2022 SCC Online 470 (Del) (*Koninklijke Philips NV v. Vivo Mobile Communication Co*). It is further stated that application is not supported with affidavit of concerned relevant person. It is stated that plaintiff has no right to agitate against the contents of the present order. It is therefore requested that the application of the plaintiff be dismissed.

4. During the course of oral submissions, once against it is submitted by the plaintiff that there are multiple cases pending between the parties and therefore plaintiff can't give no objection to the defendant number 1 to file the fresh affidavit of evidence, as defendant number 1 may improve his evidence accordingly. Same is strongly objected by the Ld. Counsel for defendant number 1 stating that the application of the plaintiff is not maintainable in the eyes of the law.

5. I have heard the arguments at length advanced by both the parties. Concerned application as well as complete case file perused carefully. All the judgments relied upon by the defendant number 1 also perused carefully. They seem not be relevant in present facts and circumstances.

6. Now, as, the present/instant application of the plaintiff is accompanied with her affidavit tn these circumstances, it

seems reasonable in the overall scenario that both the parties be freshly heard on the application of the defendant number 1 U/o XVIII Rule 2 r/w Sections 114 & 151 CPC for recalling of the order, dated 11.04.2018, and permission to the defendant number 1 to withdraw her affidavit of evidence and file fresh after the conclusion of the plaintiff's evidence and the subsequent reply of the plaintiff. The present order has been passed keeping in view the legal understanding that justice should not only be done but also seen to have been done means that people should know that justice is done. Also, judicial system has always to keep in mind that every trial is a voyage of discovery in which truth is the guard. Reliance is placed upon *Ritesh Tiwari & Anr. v. State of UP & Ors. (2010) 10 SCC 677*. Accordingly, present application is disposed of.

6. Lastly, defendant number 1 has now moved an application under section 114 read with Order XLVII Rule 1 and section 151 of Code of Civil Procedure for recalling of order, dated 08.04.2024. It is stated in the application that defendant number 1 had earlier filed an application for the withdrawal of her affidavit of the evidence, while, seeking the liberty to file the fresh after the conclusion the plaintiff's evidence. It is stated that the said application was allowed by the Hon'ble Court vide order, dated 10.08.2023, while, observing that as per the law and also consent given by the counsel for plaintiff, the application deserves to be allowed. It is stated that later on plaintiff had filed an application for recall of the said order, dated 10.08.2023, on the ground that no consent was given by the plaintiff for allowing the application of defendant number 1. It is stated that the said application was allowed not only on the consent given by the plaintiff, but, also on the merits and as per law as observed by the Court while passing the order. It is stated that application for recall filed by the plaintiff was not accompanied with the affidavit of counsel for plaintiff and as such that application is not

maintainable.

It is stated that despite this, Hon'ble Court on 08.04.2024, observed that the arguments on the application of defendant number 1 filed under Order XVIII Rule 2 of Code of Civil Procedure be heard afresh. It is stated that the plaintiff has only sought the deletion of the words "in the light of the no objection of plaintiff" but plaintiff had never challenged the grant of relief by the Court in the order, dated 10.08.2023. It is stated that therefore, there seems to be no need to re-hear the parties as mentioned in the order dated 08.04.2024 as the application under Order XVIII Rule 2 of Code of Civil Procedure was allowed on the merits also and the plaintiff had not challenged that aspect of the order. It is stated that the plaintiff had wrongly presented the fact by stating that she had given no objection qua the application of the defendant number 1 filed under Order VII Rule 14 and not the application filed under Order XVIII Rule 2 of Code of Civil Procedure. It is stated that arguments cannot be re-heard as there is no error apparent on record and no objection may be considered deleted from the order dated 10.08.2023. It is therefore requested that the order dated 08.04.2024 be recalled in that sense.

7. Learned Counsel for plaintiff submits that she does not want to file any reply to the abovesaid application of defendant number 1 filed to recall the order dated 08.04.2024 and will directly argue. Accordingly, submissions on behalf of both the parties on the application filed under section 114 read with Order XLVII Rule 1

and section 151 of Code of Civil Procedure for recalling of order, dated 08.04.2024 as well as application filed under Order XVIII Rule 2 read with section 114 and section 151 of Code of Civil Procedure for recalling of order, dated 11.04.2018 heard at length. Learned Counsel for defendant number 1 has relied upon judgment titled as *Bhagirath Shankar Somani vs. Rameshchandra Daultat Soni & Onkar*, decided on 04.06.2007. Same is also perused carefully. The same does not apply to the present facts and circumstances of the case as defendant number 1 has never been asked to lead the evidence before the plaintiff's evidence by Learned Predecessor Court vide its order dated 11.04.2018. Only affidavit of evidence of both the parties are taken on record.

8. Before, advertent to the facts of present case, it seems appropriate that the relevant provisions which defendant number 1 sought to invoke through his application filed under Order XVIII Rule 2 of Code of Civil Procedure be reproduced. Order XVIII Rule 1 & 2 of Code of Civil Procedure read as:-

*Order XVIII Rule 1 of CPC "right to begin:- the recording of evidence wherein the plaintiff would lead evidence first but the defendant may be permitted to lead evidence if after having admitted to the facts pleaded by the plaintiff, he so seeks to do*  
*Order XVIII Rule 2 CPC:- Statement and production of evidence:-(1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove. (2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.*

*(3) The party beginning may then reply generally on the whole case.*

*[(3A) Any party may address oral arguments in a case, and*

*shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.*

*(3B) A copy of such written arguments shall be simultaneously furnished to the opposite party.*

*(3C) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.*

*(3D) The Court shall fix such time limits for the oral arguments by either of the parties in a case, as it thinks fit."]*

Undoubtedly, a party has to plead the case and produce/adduce sufficient evidence to substantiate his/her submissions made in the plaint. Burden of proof as mentioned in Section 101 of the Indian Evidence Act, 1872 (hereinafter referred to as the Act) that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. The object of Order XVIII of Code of Civil Procedure is primarily to regulate the proceedings in the Court so that the parties may get sufficient opportunities to put up their cases and same may be disposed of as early as possible. The Trial Court should exercise its discretion in such a manner which advances the cause of justice and curbs the avoidable litigation in the form of appeal and revision. The procedural law is not intending to give an edge to a party over the other. Expeditious disposal is the genesis of the basic rule of procedural law. The right to begin is to be determined by the rules of the evidence. As a general rule, the party

on whom the burden of proof rests should begin. Section 101 to 114 of the Indian Evidence Act deal with the burden of proof. Reliance is placed upon *Bengal Waterproof Ltd. v. Bombay Waterproof Mfg. Co.*, (1997) 1 SCC 99, *Rathnavati v. Kavita Ghanshamdas*, (2015) 5 SCC 223, *Alka Gupta v. Narender Kumar Gupta*, (2010) 10 SCC 141 and *Chinnayyan v. Jayaraman*, AIR 1996 Mad 408.

9. Now, advertent to the present applications, it is absolutely clear or we can also say that doubtless the order, dated 10.08.2023 was passed purely on the basis of no objection given by the plaintiff as found mentioned in paragraph 4 of the order, dated 10.08.2023. The paragraph 5 where the words advancement of justice/interest of justice are mentioned is basically the continuation of the paragraph 4. Thus, it is not wrong to say that the words advancement of justice basically flows from or say used in continuation of no objection only. It is quite clear from the concerned order itself, which has already been reproduced herein before that order was passed on no objection and not on merits. It needs to be stressed/pointed out had the order, dated 10.08.2023, passed on merits there would have been certainly some discussion of law/pressed/asked to be invoked by the defendant number 1 in her application filed under Order XVIII Rule 2 read with section 114 and 151 of Code of Civil Procedure. As, later on, it was clarified by Learned Counsel for plaintiff by moving an application alongwith accompanied affidavit that there was misconception regarding the granting of no objection qua that particular application of defendant number 1 filed under Order

XVIII Rule 2 of Code of Civil Procedure as no objection was instead forwarded by plaintiff qua another application of defendant number 1 and not for this application of defendant number 1 filed under Order XVIII Rule 2 of Code of Civil Procedure. Accordingly, after hearing arguments on both sides directions were given for hearing fresh arguments on the application of defendant number 1 filed under Order XVIII Rule 2 of Code of Civil Procedure. This order has already been reproduced herein before. It is not out of place here to mention that **Justice must not only be done, but also seen to be done** as laid down by *Lord Hewart*, the then Lord Chief Justice of England in the case of *Rex. v. Sussex Justices, (1924) 1 KB 256*.

It is to be mentioned that power to review/recalling is the creation of a statute. The power of review can be exercised for the correction of a mistake and not to substitute a view. Such powers should be exercised within the limits of the statute dealing with the exercise of power. Thus, there seems to be no ground for recalling of order, dated 08.04.2024, as same has been passed after giving due consideration to concerned parties. With respect to the request of defendant number 1 through her application under Order XVIII Rule 2 of Code of Civil Procedure that she wants to withdraw her affidavit of evidence which she had filed as per directions of the Court, vide order, dated 11.04.2018. Basically, it is stated in this application by defendant number 1 that as onus of proving issues is upon the plaintiff, defendant number 1 should not be asked to file the affidavit of evidence by Learned Predecessor Court before

completion of plaintiff's evidence. It is not understandable/nor comprehensible after perusing the entire application of defendant number 1 that it is the defendant number 1 herself who has filed the affidavit of evidence and now she wants to withdraw the same for the reason which was very much available to her even at the time of filing of affidavit of evidence that is it is the plaintiff who has to prove her case first. In the entire application, defendant number 1 has miserably failed to explain this aspect that why she invoked/wanted to invoke this aspect now when this aspect that burden of proof lies upon the plaintiff was with her even at the time of filing of affidavit of evidence. Defendant number 1 fails to clarify the same either during the course of submissions or otherwise. Further, it is not understandable in what way defendant number 1 is using the term 'withdrawal' of the affidavit of evidence as it is not possible to give her back her affidavit of evidence which is already lying in file. Though, at the same time, it needs to be clarified that the defendant number 1 has all the liberty that too strictly within the broad contours of law to file the additional affidavit of evidence, if any need arises. Accordingly, both these applications of defendant number 1 are hereby disposed of.

10. Nothing stated herein above shall tantamount to expression of opinion on the merits of the case.

(Manu Vedwan)  
District Judge-02/North-East,  
KKD Courts, Delhi/02.08.2024