

18.01.2017

Present: Plaintiff with Ms. Pusha Singh, proxy Advocate.
None for defendant no. 1.
Ms. Pushp Gupta, Advocate for defendant no. 2.

An application has been filed by the plaintiff under Order 6 Rule 7, under Order 6 Rule 16 r/w Section 151 CPC for not taking the amended written statement of defendant no. 1 and striking off her amended written statement. Copy kept on record which can be collected by the counsel for defendant no. 1 as and when appears.

Put up for reply and arguments on this application as well as on the point raised by counsel for defendant no. 2 "Whether the replication filed by plaintiff to the written statement of defendant no. 2 without permission of the Court can be taken on record or not?" on **08/03/2017**.

Put up this matter at 4.00 PM today for orders on two pending applications.

(ASHWANI KUMAR SARPAL)
Addl.Distt Judge(NE)-01
18.01.2017

At 4.00 PM (Order on application of plaintiff under Order 7 Rule 14 CPC dt. 19/05/2016 [filed on 08/06/2016] for taking on record the documents and on application of the defendant no. 1 under Order 7 Rule 14 (3) CPC for not taking the documents of the plaintiff on record filed on 24/02/2016)

When the case was earlier pending in the Hon'ble High Court, then after receipt of written statement of defendants, vide Order dated 22/05/2015,

parties were directed to file their documents within one week. After the completion of admission/denial stage, then again Hon'ble High Court vide Order dated 25/09/2014, both the parties were granted leave to file their documents. Again vide Order dated 10/03/2015, parties were permitted to file additional documents within a period of four weeks after disposal of one application of plaintiff under Order 7 Rule 14 CPC to file more documents.

However, record indicates that plaintiff is in habit of filing documents at her discretion as and when wishes. Plaintiff infact is not allowing the case to proceed further and adopting delaying tactics on one ground or another by moving different types of misc. applications. The plaint was amended twice and even replications were also filed thereafter but plaintiff filed documents with those pleadings even without any prior permission of the Court. Now when Hon'ble High Court vide Order dated 26/09/2016 granted final opportunity to the plaintiff to amend the plaint, then also along with replications, she filed some more documents without even any prior permission of the Court. As per record, along with the initial plaint some documents were filed by the plaintiff but thereafter more documents were filed again and again in piecemeal manner on 4-5 occasions and lastly along with the replication. (The question whether replication to the written statement of defendant no. 2 is to be taken on record or not is yet to be decided due to objections raised).

In view of the act and conduct of the plaintiff in filing documents again and again without leave of the Court, defendant no. 1 moved an application under Order 7 Rule 14 (3) CPC for not taking the documents on record which were filed on 24/02/2016. On the other hand, plaintiff moved an application under Order 7 Rule 14 CPC on 08/06/2016 for taking those documents on record. The arguments have been heard at length on these two applications which are being disposed off by this Order.

As per law, the documents are required to be filed along with the

plaint or written statement and thereafter it cannot be filed without permission of the Court. In case documents are not in power or possession of the parties, then a list of reliance has to be filed mentioning therein that certain documents are relevant but cannot be filed at this stage and will be summoned/proved at subsequent stage. In such circumstances, party has to mention in whose power or possession such document is, which is relied upon.

Plaintiff did not file any list of reliance along with the plaint. When the plaint was amended twice and even at third time after the order of Hon'ble High Court dated 26/09/2016, no such list was filed. Plaintiff earlier filed similar application under Order 7 Rule 14 CPC which was allowed on 10/03/2015 and four weeks time was granted to file the documents but again complete documents were not filed. Prior to that Hon'ble High Court had granted twice opportunities to file the documents but that same was also not availed. These facts point out how negligently and in casual manner the plaintiff is conducting her case.

The trial of the case has not been started because the issues are yet to be framed after completing the subsequent admission/denial stage. Though once the admission/denial had taken place on 18/09/2014 but after filing of certain more documents by the parties as per the permission granted on 10/03/2015, further admission/denial has to take place.

Division Bench of Hon'ble Delhi High Court in case **Shakun Jaiswal Vs. Anand Pershad Jaiswal FAO (OS) 457/2014 decided on 03/02/2016** permitted the plaintiff of the case to file the additional documents on the basis of an application moved prior to framing of issues subject to cost of Rs. 50,000/-. Hon'ble High Court held that evidence of the parties is yet to commence and relevancy and validity of the documents which are reported to be relevant for the disposal of the case would be considered at trial stage.

Hon'ble Supreme Court in case **Kapil Kumar Sharma Vs. Lalit Kumar Sharma Civil Appeal No. 2330 of 2009 decided on 09/04/2009** even permitted the plaintiff to file the additional documents when the case was at evidence stage and his cross examination was yet to be started. The Supreme Court said that the documents be taken up for consideration subject to proof thereof.

Counsel for the defendants placed reliance upon case law **Polyflor Ltd. Vs. A.N. Goenka 2016 (V) AD (Delhi) 168** wherein the Hon'ble High Court refused to allow filing of the new documents when the plaintiff was already under cross examination and about 140 questions were already put in the cross. The application was moved after 12 years of the filing of the suit and the documents were already found in possession and power of the plaintiff were not filed along with the plaint or at admission/denial stage or even at the stage of framing of issues. The Hon'ble High Court has also found that the vague and unconvincing reasons have been given for not filing the documents earlier. Reliance was also placed upon case law titled as **J.K. Kashyap Vs. Rajiv Gupta 196 (2013) DLT 263** in which the documents were not allowed to be taken on record as the plaintiff has already led his entire evidence by filing affidavits of evidence of entire witnesses. Counsel for the defendants also relied upon case law **Asia Pacific Breweries Vs. Superior Industries 2009 (109) DRJ 497** in which the application for filing additional documents was rejected as the case was at the plaintiff's evidence stage and the Court found that no just and reasonable grounds are made out for non-filing of the same earlier and serious prejudice will be caused to the opposite party because a denova trial has to be started since in response to the documents filed, the opposite party has to be given a chance to file his documents in rebuttal which will lead to the fresh trial. The Hon'ble High Court also said that the plaintiff can not be allowed to keep on filing fresh material and documents with the progress

of the case or along with the affidavits of the witnesses.

Counsels for the defendants also relied upon another case law **Vijay Kumar Goel Vs. DDA 163 (2009) DLT 372** however, in this case permission was granted to file the documents subject to cost of Rs. 10,000/- as Hon'ble High Court found that the plaintiff has not concluded his evidence and no prejudice is likely to be caused to the defendant. The permission was granted to file the belated documents on record despite the fact that no sufficient explanation was given why it was not filed earlier. In another matter cited by counsel for the defendant **Gold Rock World Trade Ltd. Vs. Veejay Lakshmi Engineering Works Ltd. 143 (2007) DLT 113** under which the application to file the additional documents at belated stage was dismissed as the evidence of the plaintiff was closed and the defendant was going to lead his own evidence and no sufficient reason was given for non-filing the documents at earlier stage.

The judgments cited on behalf of the defendants mentioned above are of Single Bench whereas the judgments cited on behalf of the plaintiff are of Division Bench or of Supreme Court. However, from the above case laws cited by both the parties, one thing is clear that the law is very liberal in respect of filing the belated documents in those matters where the trial is yet to start or is at the initial stage. Here in the present case, issues are yet to be framed after conducting the admission/denial of the documents. The documents filed on record by the plaintiff at belated stage are yet to be proved through evidence. The question of relevancy and admissibility of the documents filed can be looked into at later stage. The chance can be given to the defendants also to file their additional documents if any, in order to rebut the documents filed by the plaintiff at belated stage and by this manner any prejudice caused to the defendants can be meet out. Lot of arguments have been advanced to show how and in which manner the documents filed by the plaintiff on

24/02/2016 are relevant or not relevant to the controversy of the case but I am of the opinion that this issue should not be dealt with at this juncture because any finding given about any document filed by the plaintiff can effect the final decision and also can cause prejudice to any particular party. The point regarding admissibility and relevancy of such documents can be seen at the appropriate stage of the case in view of the decision of the Division Bench of Hon'ble Delhi Court in Shakun Jaiswal's case and subject to proof of the same as per the decision of the Hon'ble Surpeme Court in Kapil Kumar Sharma's case.

The reasons given in the application of the plaintiff under Order 7 Rule 14 CPC for seeking permission to file the documents is that she was thrown out of the house by defendant no. 1 and all her documents pertaining to business and other records were retained illegally by the defendant no. 1. It is also stated that plaintiff has to run from pillar to post to get relevant documents so as and when she got those documents in February, 2016, she filed it immediately in the court. According to the plaintiff, the documents sought to be produced were not in her possession earlier and filing of the same is important for proper disposal of the matter. It is also alleged in the application that reason to file these documents only occurred after the written statement was filed by the defendants. These reasoning given by the plaintiff appears to be not correct and sufficient because the complete details are missing in the application. No explanation is given why the list of reliance was not filed to mention in whose power and possession the documents were when the same could not be filed earlier. The argument advanced by counsel for defendants that plaintiff is filing documents again and again to cover up the lacuna which may be causing prejudice to them appears to be somehow correct but the defendants can be compensated in terms of money as well as can be given an opportunity to file their own additional documents, if any in support of the same and to rebut the

documents of the plaintiff, so despite being existence of insufficient reasons given in the application of the plaintiff, the same can be allowed subject to heavy costs.

In view of the above discussions, the application of the plaintiff dt. 19/05/2016 (filed on 08/06/2016) under Order 7 Rule 14 CPC for taking on record the documents is allowed subject to cost of Rs. 20,000/- payable to both the defendants in equal proportions and the application of the defendant no. 1 under Order 7 Rule 14 (3) for not taking the documents filed on record on 24/02/2016 is rejected. One chance is also given to both the defendants to file their additional documents, if any.

Put up this matter on date already fixed i.e. 08/03/2017 for the purpose fixed earlier in the morning.

(ASHWANI KUMAR SARPAL)
Addl.Distt Judge(NE)-01
18.01.2017