

**IN THE COURT OF MS. NEELOFER ABIDA PERVEEN : DISTRICT
JUDGE (COMMERCIAL COURT)-01, CENTRAL / THC / DELHI.**

CS (Comm.) No. 314/2025
CNR NO.DLCT01-003985-2025

Mohd. Asif

.....Plaintiff

VERSUS

Naresh Kumar @ Naresh Rana

..... Defendant

**-ORDER-
13.5.2026**

This is an application under Order XIX read with Section 151 of CPC for striking out the affidavit of evidence of PW-1 Mohd. Asif or in the alternative for striking out portions of the affidavit of evidence being out of pleadings.

1. Ld. Counsel for the defendant submitted that issues were framed on 07.01.2026 in the present case and the plaintiff was directed to file his evidence by way of affidavit. That on 19.01.2026 the examination-in-chief of the PW-1 was recorded. That from a perusal of the evidence of affidavit filed by PW-1, it transpires that various paragraphgraphs containing fresh averments and facts have been freshly introduced / modified / twisted / added, which were never the part of the pleadings and are alien to the case set up by the plaintiff. That various paragraphgraphs and new facts are attempted to be introduced as an afterthought to cover up the lacunas. That not only are these portions beyond pleadings but otherwise also not

admissible in evidence. That some of these have specifically been put to the witness during cross-examination recorded on 06.02.2026.

(ii) That modification/ amendments/twisting has been done in affidavit of evidence through paragraph nos. 2, 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 22, 24, 25 and renumbered paragraph(s) no. 31, 39 and 40. That even certain paragraphs of evidence are split and merged, specially, paragraph no.3 & 4 of the paragraph no.2 of the suit to give different meaning and colour, paragraph no. 9 and 11 of the paragraph no. 2(iii) of the replication to give different meaning, paragraph no. 12 & 13 of the paragraph no.2(v) of the replication to give different meaning, paragraph no. 26 and 27 of the paragraph no. 12 of the suit to give different meaning and colour, that paragraph no. 29, 30, 33 of the paragraph no. 17 of the suit to give different meaning and colour. That renumbered paragraph nos. 37, 38 and 40 are connected with paragraph no. 33 of the suit to give different meaning, and renumbered paragraph nos. 41 and 42 are part of paragraph 34 of the suit and have been split with otherwise inspiration.

(ii) That it is cardinal principal of law that the facts and averments beyond the pleadings cannot be allowed to be taken on record, particularly if the same are alien to the pleadings of the parties to the lis. That during the cross-examination conducted by the defendant on 06.02.2026, portions pertaining to the averments of the affidavit of evidence of the plaintiff were put to the PW-1 if the said facts were mentioned or were part of the pleadings. That the answers given by the PW-1 to most of the questions show that PW-1 has been giving evasive answers by stating that *"I cannot say"*. That from the cross-examination of the PW-1, it infact

transpires that the plaintiff is having no knowledge of his plaint and replication which vitiates the credibility of the witness. That evasive answers are being given intentionally to avoid direct answers. That the provisions of Order XIX, CPC empower the Court to control evidence and reject the portions of the affidavit of examination-in-chief or to strike out the parts of the affidavit or the entire affidavit in evidence.

(iii) That Section 143 of Bhartiya Sakshya Adhiniyam (BSA), 2023 specifically mandates that examination-in-chief must relate to relevant facts. That the relevant fact are to be construed strictly in terms of the pleadings, that any fact which was not pleaded in the plaint, cannot be permitted to be incorporated in as an afterthought improvement to fill in the lacuna of the case. That most of the affidavit in evidence being out of pleadings, it will lead to lengthy cross-examination of PW-1 and on facts which are alien and not relevant, as was the situation while cross-examination of the PW-1 on 06.02.2026 and that if the said paragraphs and portions of the affidavit of evidence are not struck off, it will cause grave prejudice to the defence of the defendant and indirectly allow the plaintiff to amend / improve / incorporate new facts which is not permissible under the Commercial Courts Act.

2. Ld. Counsel for the plaintiff, on the other hand, submitted that the application is completely frivolous, baseless and has been moved only with the intention of delaying the disposal of the present suit, which is presently fixed for the cross-examination of PW-1. That from the record of the case, it is evident that the defendant is indulging in one or the other malafide and dilatory tactics to avoid effective cross-examination of PW-1. That in the

present case, affidavit in evidence was tendered on 19.01.2026, and had been supplied in advance to the Counsel for the defendant. That the plaintiff has also been subjected to cross-examination. That no objection regarding the affidavit in evidence was taken either during tendering thereof or while conducting cross-examination on 19.01.2026.

(i) That the present application has been filed just prior to the last date of hearing, i.e. 18.02.2026, when the matter was specifically fixed for the cross-examination of PW-1, who is aged about 75 years, that the entire effort of the defendant in filing such frivolous repeated applications is clearly to harass the plaintiff, who has been diligently attending this Court for recording of his evidence and that the present application is yet another attempt by the defendant to derail the trial. That in the affidavit of evidence filed by the plaintiff, the contents are confined to the submissions and facts made in the plaint, replication and borne out from the documents on record. That the said affidavit in evidence further states the facts, for proving the document, as per requirements of Evidence Act. That there is no question of introducing any fact, beyond the pleadings/ improvement/ incorporating any new fact.

(ii) That the affidavit in evidence cannot be expected to be exact replica of pleadings of plaint/ replication, dehors any reference to the documents/ its contents and manner of proving the said document. That the defendant has already commenced cross-examination of PW-1. That whether a particular statement is beyond pleadings or not, the same can only be examined at the appropriate stage and necessary implications can well be adjudged, while finally deciding the present case. That the effect

of the cross examination conducted on 6.2.2026 can be determined, at the final stage of the present suit, and for the purposes the entire cross examination of PW-1 would be relevant. That the Defendant is deliberately delaying cross examination of PW-1, by filing false and frivolous application one after the other.

3. Heard.

4. The suit of the plaintiff instituted on 19.3.2024 is for recovery of possession, and damages in respect of property described as bearing municipal Nos.10115-10119, Ward no.12, Katra Tejab Mill, Library Road, Delhi-110006 situated at Pul Bangash Azad Market, Delhi ad-measuring 1100 sq. yards on a set of facts that the plaintiff is the absolute owner and landlord of said property. The the property was owned by the plaintiff's late father. That the defendant was inducted as a tenant in respect of shop at ground floor of the property bearing no.10117 also having one room at first floor with access through stairs in the shop itself, referred to as suit property, vide rent agreement dated 25.10.2001 at a monthly rental lastly payable @ Rs.645/- p.m. That the last payment was made by the defendant for the period up to 30.6.2019 and is in arrears of rent since then. That the defendant from February 2023 started disputing the ownership/landlord-ship of plaintiff of a portion of a larger property. That in CS DJ NO.151/2023 titled as Dr. Poonam v Dept. of Land & Building & Ors., the defendant as the Plaintiff no.3 with malafide denied the ownership and landlord ship of plaintiff claiming ownership / landlord-ship in a third person in respect of a portion of the said property.

5. The defendant filed Written Statement contending inter alia that the suit premises has two parts one is the front shop ad measuring 6.5 x 8 feet, defendant has taken the same from the original occupant on 29.10.1984 and started the business with the name and style of Rana Fine Masale. That in the year 1995, backside portion of the premises were taken from the plaintiff. That a rent note was executed of the backside in favour of Ms. Sukhvinder Kaur as premises no.10115/10. That there was no rent agreement qua premises no.10117 which has been taken from Munni lal on 29.10.1984. That in 2001, the partners carried out repairs and made common shop by inclusion of both the premises. The plaintiff created new tenancy and included front portion of the shop in tenancy in name of plaintiff whereas plaintiff has no connection with the front portion of the shop and that under his pressure, tenancy has been created of front portion as well. That the plaintiff clubbed both the premises no.10117 and 10115/10 and rent agreement was executed for premises no.10117 whereas, rent agreement actually is of 10115/10 having no connection with premises no.10117.

6. Upon conclusion of pleadings, following issues were framed on 7.1.2026:

1. *Whether the plaintiff is entitled to a decree of possession in his favour and against the defendant thereby directing the defendant to hand over vacant, physical, peaceful possession of premises described as shop at Ground Floor bearing No. 10117, Ward No. XII, Katra Tejab Mill, Library Road, Delhi - 110006 also having a room at first floor with stairs within the shop as shown in red colour in the site plan? OPP.*
2. *Whether the plaintiff is entitled to recover damages from the defendant for pre suit unauthorized user and occupation of the*

aforested premises, in the amount of Rs. 3 lacs or any other amount?OPP.

3. *Whether the plaintiff is entitled to recover from the defendant pendente lite and future damages for the unlawful user and occupation of the aforestated property @ Rs. 1 lac per month from the date of filing of the present suit with periodical enhancements till recovery of actual possession of the said property, or at any other rate and for any other period? OPP.*
4. *Whether the plaintiff is entitled to interest @ 18% per annum in respect of any amounts as determined in answer to issues No. 2 and 3 from the date of filing of the suit till realization or at any other rate? OPP.*
5. *Whether the suit of the plaintiff is hit by Section 50 of the DRC Act? OPD.*
6. *Whether the suit of the plaintiff is not maintainable in the light of Section 19 of Slum Area (Improvement and Clearance) Act, 1956? OPD.*
7. *Relief.*

7. Plaintiff is leading the evidence, affidavit in evidence of PW1 has been tendered on 19.1.2026 and has also been cross-examined in part on 6.2.2026 when this application u/o XIX Rule 3 R/w Section 151 CPC for striking off the affidavit in evidence has been filed on 18.2.2026. It is contended that certain new facts and averments have been freshly introduced in the affidavit in evidence by PW1, what specifically are these fresh facts and averments is no-where delineated in the application. Certain averments/facts are alleged to have been modified/twisted, what facts in what manner and to what import, is no where suggested in the application, the purported additions are also not underscored. Such fresh facts, modifications/additions are alleged to create a new case, how and in what manner and what is this new case, has nowhere been explicated, nor addressed during the hearing on the application.

8. Under Order XIX CPC, Court may at any time order that any particular fact/facts may be proved on affidavit and affidavits are required to be confined to such facts as the deponent is able of his own knowledge to prove. Court may direct the cost to be borne by the party filing an affidavit and necessarily setting forth matters of hearsay, argumentative in nature, contents of documents. The contents of the affidavit fall foul on which of these yardsticks, and in what manner has also not been propounded. The Court may in a Case Management Hearing under Order 15A Rule 6(m) and (n) reject any affidavit of evidence filed by a party containing irrelevant, inadmissible or argumentative material, and strike off any parts of the affidavit of evidence containing irrelevant, inadmissible or argumentative material.

9. Merely for the reason that some facts have been presented in a different light and the deposition is structured differently from the pleadings, is no cause to invoke the powers under Order 15A Rule 6 (m)(n). Simpliciter alleging that various portions are beyond pleading is not sufficient to reject or strike off parts of the affidavit. The defendant is required to clearly set forth as to what are these fresh averments and fresh facts which are now sought to be introduced at the stage of evidence by the plaintiff for such a course would certainly take the opposite party by surprise by changing the nature of the cause of action set off. Whether any material improvement has been made, that can be appreciated alone once evidence is led. Credibility of a witness also cannot be determined midway the deposition of a witness, for any and every deposition is appreciated and assessed in its entirety. It is too specious a ground to reject an affidavit in

evidence of a party or any portion thereof on the premise that it could potentially lead to lengthy cross-examination.

There is therefore no merit in the application, the application accordingly is dismissed. The defendant, however, would always be at liberty to bring out such alleged improvements, fresh facts and portions claimed to be beyond pleading in cross-examination towards an assessment of the evidence at the stage of final adjudication.

(Neelofer Abida Perveen)
District Judge (Commercial Court)-01
Central District/THC/Delhi.

