

SKGT010012452021



MONEY SUIT NO.177 OF 2021
Ashwani Kumar Kapila v. Simplex Infrastructure Ltd.

21.08.2023

Plaintiff present through Ld. Counsel Shri Kazi Sangay Thupden,
Ms. Prerna Rai and Ms. Som Maya Rai.

Defendants No.1 to 4 absent.

Defendant no.5 present through Ld. Counsel Shri Sudhir Prasad.

I have heard Ld. Counsel for the plaintiff and for defendant no.5 on an application filed by the plaintiff under Order 11 Rule 12 and 14 CPC, 1908 read with Section 66 of the Indian Evidence Act, 1872. The hearing of this application was necessary even in the absence of defendant no.1 to 4 since they would not appear w.e.f 22.06.2023.

Ld. Counsel for the plaintiff would submit that production of the original work order dated 01.10.2015 and other invoices (abstract of daily labour supply bill and details of recoveries) is essential for the plaintiff as his entire case is based on the said documents. That in the event of defendant no.1 to 4 (in whose possession theses documents are) failing to produce these documents, the plaintiff would be in a position to prove the said documents by leading secondary evidence. In support of his

submissions, Ld. Counsel for the plaintiff has relied on the following cases:-

1) Shri M.L Sethi v. Shri R.P Kapur (1972) 2 SCC 427;

2) Smt. Hari Devi v. Smt. Krishna Devi ILR (1990) M.P 385; and

3) Sambhu Prasad Sharma and Others v. Smt. Pushpa Badonya ILR (2011) M.P 144.

Ld. Counsel for the defendant no.5 raises no objection.

As these documents are relevant for this case and particularly for the case of the plaintiffs, defendant no.1 to 4 shall produce the same (in original) by the next date along with an affidavit in terms of the observation in paragraph 7 of M.L Sethi's case (*supra*).

The application is allowed and disposed of.

To: 20.09.2023 for production of original documents by defendant no.1 to 4/further orders.

sd/-
(*K.W. Bhutia*)
Principal District Judge, Gangtok

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