

CS DJ 8802/16  
ANIL KUMAR GUPTA  
Vs.  
AIR INDIA LTD AND ANOTHER

**25.07.2023**

Present : Sh. Shashank Sharma Adv., Ld. Counsel for plaintiff through  
VC.

Sh. Aditya Adv., Ld. Counsel for defendant.

Reply filed with spare for the plaintiff.

Vakalatnama is filed by Ld. Counsel for defendant.

Arguments heard.

Case is at the stage of P.E.

Plaintiff has moved application for summoning of the accountant of the witnesses of the defendant to produce the relevant records with regard to the payments made by the defendant to the plaintiff as well as other records of the PAP Scheme qua the plaintiff pertaining to the present case.

Ld. Counsel for plaintiff submits that the concerned Accounts Officer of the defendant is required to be summoned with direction to produce the Accounts/documents pertaining to the Preferred Agent Partnership Scheme (PAP Scheme). He submits that plaintiff has filed the case for recovery of the certain outstanding dues to which plaintiff was entitled under Preferred Agent Partnership Scheme (PAP Scheme) of the defendant.

Application is opposed by Ld. Counsel for defendant submitting that no list of witnesses was filed by the plaintiff as per Order 16 Rule 1 CPC. He argues that the plaintiff has to stand on his own legs to prove his case and could not depend upon the defendant to produce the record of the defendant. He further argues that no purpose would be

served by summoning defendant witness to produce the record of the defendant.

Admittedly, no list of witnesses was filed by the plaintiff. Plaintiff could have availed the provisions of Order 12 Rule 8 CPC giving the notice to produce the relevant records by the defendant and non production of the same could have led to appropriate inferences. Filing of statement of account or not by the defendant in his defence is sole prerogative of the defendant which the defendant may or may not to produce in his defence. In any case plaintiff shall have the opportunity to cross examine the defendant witness in this regard and in case no such record is produced/ relied upon by the defendant, appropriate inferences can be drawn.

In my considered opinion, plaintiff in his evidence, without citing the list of witnesses and without specifying the documents not his power or possession on which the plaintiff relies, before the commencement of the trial, cannot at the stage of plaintiff evidence ask the defendant to produce its statement of account and for this purpose, the plaintiff should stand on his own legs.

Therefore, application is dismissed, with liberty to the plaintiff to take appropriate steps/ exercise the options as aforementioned as per law.

LC is directed to further complete recording of remaining evidence by next date.

Put up for final arguments on **01.09.2023**.

**(Munish Markan)**  
ADJ-02/(SE), District Courts, Saket,  
New Delhi/25.07.2023