

13 CS DJ 1080-19

SUBHASH CHANDER Vs. BRIJ MOHAN MISHRA

01.11.2023

Present:- Sh. S.N. Gupta, Ld. Counsel for plaintiff along with plaintiff/PW1 in person.

Sh. Mohd. Musabbir Ansari, Ld. Counsel for defendant no. 1 and 2.

Sh. R.K. Pandey, Ld. Counsel for defendant no. 3.

Today an application under Order XIV Rule 2 C.P.C. has been moved by defendant no. 3 to treat issue no. 4 framed on 02.12.2022 as preliminary issue. Perusal of record specifically order dated 02.12.2022 reveals that an application under Order VII Rule 11 C.P.C. was withdrawn by defendant no. 3 on that day. Perusal of the said application reveals that the same ground regarding valuation and court fees was urged by the said application. Proposed issues were also filed by defendant no. 3 on the same date. This issue as framed was not mentioned in the proposed issues. Issues were framed in presence of the counsel of defendant no. 3. However, neither the defendant no. 3 pressed on his application under Order VII Rule 11 C.P.C. nor in the proposed issues the said issue was proposed to be treated as a preliminary issue nor this submission was made during the proceedings on 02.12.2022.

The case is presently at the stage of cross examination of PW1. PW1 was cross examined by defendant no. 3 on LDOH and the same was deferred on the request for Ld.

Counsel for defendant no. 3 as he had to attend time bound manner in another court.

In view of the facts mentioned herein above, it is clear that defendant no. 3 is trying to delay the proceedings as he acted upon the issues framed and even conducted cross examination of PW1 on the LDOH. Therefore this application cannot be entertained at this stage. Resultantly, **the application is dismissed.**

Although, the cross examination of PW1 was deferred on the last date on the express request of defendant no. 3, Ld. Counsel for defendant no. 3 has expressed his inability to conduct the further cross examination of PW 1 today. The date on the LDOH was given at the consent of the parties. Ld. Counsel for defendant no. 3 is present in the court today but has declined to conduct the cross examination of PW1 today.

In view of the same, one last and final opportunity is granted to defendant no. 3 to conduct the cross examination on NDOH, subject to cost of Rs. 5000/- to be paid to the plaintiff.

List for remaining PE on **28.11.2023.**

(Rahul Bhatia)
ADJ-1 (South-East), Saket Court
New Delhi/01.11.2023(sk)