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CS DJ 76523/16
PRAMOD KUMAR GUPTA
Vs.
MONINDER PRASAD GUPTA

20.02.2024

Present: Sh. S. K. Mittal, Ld. Counsel for plaintiff.

Sh. Arun Sehrawat, Ld. Counsel for defendant no. 1.

One application on behalf of defendant under Order 18 rule 17 CPC read with Section 151 CPC as filed on 20.01.2024 is on file. Its copy is stated to be already supplied to opposite party.

Ld. Counsel for plaintiff stated that he is ready to argue the application today itself without any formal reply.

Submissions on the application are heard.

By way of present application, defendant no. 1 is praying for allowing him to tender his affidavit of his chief examination and his cross examination.

The present suit was filed in 2015 and issues were settled on the pleadings of the parties on 02.02.2016. The plaintiff completed evidence on 14.09.2022 and defendant was granted opportunity to lead evidence. On 21.12.2022, affidavit of two witnesses were filed alongwith applications for permission to file the documents. The said applications were allowed by the court vide order dated 29.03.2023 subject to compensation to the plaintiff. On 01.08.2023, cost was paid to plaintiff by defendant no. 1 but no witness was examined, as such, further opportunity was granted to defendant no. 1 to ensure the presence of his counsel so that the witnesses whose affidavits were filed may be

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examined. The defendant no. 1 was present however another witness whose affidavit was filed, was not present. On the adjourned date, fresh vakalatnama was filed on behalf of defendant no. 1. Although the cost was paid but defendant witness was not produced in the witness box and considering the facts, the evidence of the defendant no. 1 was closed.

The reason given today is that counsel was newly engaged so he could not produce the witness in the witness box to tender his affidavit. No ground is mentioned for non production of other witness Devender Prashad whose affidavit was filed.

The ground that the counsel for defendant no. 1 was newly engaged is not sufficient to re-open the evidence as it was to be considered by the counsel to admit the file from the defendant within a short span of time and if he had admitted the file and agreed to represent the defendant no. 1 then he was supposed to examined the witnesses of defendant no. 1. Considering the facts, application stands dismissed.

Final arguments are heard.

Put up for perusal of file and consideration on **30.03.2024** in the post lunch session.

(SUNIL CHAUDHARY)
ADJ-04/North-West
RHC/Delhi 20.02.2024