

Ej. Suit No. 327 of 2019
CNR No :: WBPS01-000851-2019

Order No. 28
dated 02.02.2024

Today is fixed for hearing of the petition u/O-6, Rule-2 of CPC filed by the defendant on 13.10.2023.

Both sides are represented through their Ld. Advocates.

Written objection has already been filed by the plaintiff against the above application.

Hd. Both sides.

Perused the petition and other materials on record.

Considered.

By the captioned petition, it is submitted by the defendant that the affidavit-in-chief of PW-1 contains many statements in paragraph nos. 1, 11 & 13 which are beyond the pleading of the plaintiff and accordingly the defendant prays for an order of the expunge of the above paragraphs from the affidavit-in-chief of PW-1.

The plaintiff, on the other hand, submitted that the instant petition is absolutely malafide as the plaintiff has only confined the affidavit-in-chief of PW-1 within the pleadings of the case.

After hearing both sides and perusing the materials on record this Court comes to the finding that it is settled position of law that the parties are only permitted to lead evidence which are within the pleadings of the case. Needless to mention that the pleadings of a case comprises of both the plaintiff's pleadings as well as the defendant's pleading and a party is bound to adduce evidence which are within the pleadings of the case. As such, even if, any evidence is given by any of the parties which is beyond the pleadings of the parties, such evidence cannot be considered by the Court in view of well settled principle of law that no amount of evidence beyond the pleadings of the parties can be looked into by the Court as enunciated by the Privy Council in its celebrated decision reported in **AIR 1930 PC 57** which has been subsequently reiterated by the Hon'ble Supreme Court in the decision reported in **1998 (9) JT, P40**.

Reliance is further placed on the decision reported in **2016 (2) CHN CAL 678 in the case of Piyali Das -vs- Gurudas Chakraborty** on the above point.

Therefore, in the light of the above discussion, this Court holds that even if any evidence is adduced by the PW-1 which are beyond the scope of the pleading of the case, the same is required to be ignored by the Court and taking judicial note of the above fact, this Court finds it appropriate to proceed with the cross-examination of the PW-1 as the admissibility of evidence of PW-1 as made out in the affidavit-in-chief would be adjudged finally at the time of disposal of the instant suit.

Accordingly, the petition dated 13.10.2023 filed by the defendant is disposed of with the observation made herein above.

Fixing **13.02.2024** for cross-examination of PW-1.

Dictated and corrected by me:

Judge

Smt. Sudipa Banerjee
(J.O. Code: 01148)
Judge, 3rd Bench
Presidency Small Cause Court,
Calcutta.