

O.S 05/2019.

Order no.47, dated 06.06.2024

Today is fixed for passing order in respect of the petition dated 03.04.2024.

Parties file hazira.

Record is taken up for passing order.

In the petition under Order 18 Rule 17 of CPC, plaintiff submitted that the conducting Advocate of defendant No. 3 cross examined PW-1 regarding production of some documents, which were later produced by PW-1 on 04.04.2022 and 10.05.2022. Now, the plaintiff has sought to recall PW-1 in order to prove those documents.

It appears that similar petition dated 10.05.2022 was rejected *vide* order No. 46 dated 10.05.2024 as plaintiff did not press for the same.

Defendant Nos. 1 and 2 submitted written objection against the petition and prayed for rejection of the same objecting *inter alia* :-

- a) that the petition has been filed to delay fair proceedings of this suit;
- b) that some of the documents are beyond pleadings;
- c) that plaintiff did not offer any explanation as to why the documents were not produced earlier despite having the same in his custody;
- d) that photographs can not be admitted into evidence in absence of proper proof;
- e) that no new facts have been brought forth by the plaintiff while seeking to produce the documents in question.

Defendant no. 3 also raised his objection against such petition.

Perused all materials lying in the record including the evidence adduced by PW-1 and documents produced by plaintiff.

Upon consideration, I am of the humble opinion, that marking of some documents as exhibited do not amount to construing the same as “admissible” or “relevant”. Order 18 rule 17 of CPC authorises court to recall and examine any witness at any stage of a suit to put such questions to him as the court thinks fit. The objections advanced by the answering defendants against the petition comes across to me to be premature and hence misconceived. Recalling of PW-1 does not necessarily mean admission of the documents, in question, into evidence. Obviously, defendants shall get the opportunity to do everything legally possible in order to challenge admissibility and relevance of such documents at appropriate stage of proceedings. In any case, the authority to opine regarding admissibility and relevance of evidence rests with the court. So far as allegation of dilatory tactics as has been raised by the defendants one must not forget that plaintiff is the *dominus litis* in respect of the suit.

In such view of the matter I do not find any impediment to grant the prayer of the plaintiff dated 03.04.2024 under order 18 rule 17 albeit with the rider that the re-examination of PW-1 on recall shall be restricted only to the questions referred by

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plaintiff in the petition under consideration. On no account the plaintiff shall be allowed to venture beyond the ambit of such questions during re-examination of PW-1 on recall.

Hence, it is,

ORDERED

that the prayer dated 03.04.2024 is allowed, on contest, without any order as to costs.

To 09.07.2024 for re-examination of PW-1 on recall in terms of the foregoing order. Plaintiff must come ready.

D/C by me,

ADJ, FTC-II, Sealdah.

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JO Code:WB00848