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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 631/2014

SANDIP SOMANY & ANR

..... Plaintiffs

Through: Mr. Manav Gupta, Ms. Esha Dutta,
Mr. Sahil Garg & Mr. Devang
Kumar, Advocates (M-9818022022).

versus

RAM NIWAS JINDAL & ORS

..... Defendants

Through: Mr. Avinash Trivedi, Advocate for D-
1 (M-9871441764).
Ms. Anubha Agarwal, Advocate for
D-2&3 (M-9999750725).
Mr. Anil Kumar, Advocate for D-4
(M-9873593459).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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26.11.2018

I.A. 9994/2018

1. This is an application under Order XVI Rule 1(3) CPC seeking to include Mr. R.K. Kabra as an additional witness on behalf of the Plaintiffs. The background of the application is that during the cross-examination of PW-1, he claims that the General Power of Attorney executed by the Plaintiff in favour of Defendant No.1 was primarily done on the instructions of a Senior Executive – Mr. Kabra. There is no dispute that the name of Mr. Kabra surfaced for the first time during the cross-examination of PW-1. The said person is not mentioned either in the plaint or in the written statement. The Plaintiff did not even mention his name in the list of witnesses. Since the name of Mr. Kabra has surfaced as having been a key person in the negotiation of the transaction between the Plaintiff and Defendant No.1, the Plaintiff submits that it wishes to examine Mr. Kabra.

2. The application is opposed by all the Defendants on the ground that this



is nothing but an attempt to plug the loopholes which have arisen during the course of the cross-examination.

3. A perusal of the cross-examination of PW-1 clearly shows that knowledge has been imputed to Mr. Kabra in respect of the transaction with Defendant no.1. It is also the admitted position that he is not mentioned in the list of witnesses or in the pleadings. The Plaintiff's evidence has not yet been closed.

4. Ld. Counsel for the Plaintiff relies on Order XVI Rule 1A. It is submitted that until the Plaintiff's evidence is closed, the Plaintiff has the entitlement to bring any witness to give evidence on his behalf.

5. Though, it is quite mysterious as to how a key person in the transaction, was not mentioned either in the pleadings or even brought as a witness, until this stage, it appears from the cross-examination that Mr. Kabra has played an important role. The adjudication of the issues would therefore be more effective if Mr. Kabra is brought as a witness and he is cross-examined by the Defendants. Accordingly, the Plaintiff is permitted to bring Mr. Kabra as a Plaintiff's witness, subject to payment of Rs. 5,000/- to each of the Defendants.

6. The examination-in-chief and cross-examination of Mr. Kabra will be conducted in front of the Local Commissioner. Recordal of the statement shall commence on 28th November, 2018, the date already fixed before the Local Commissioner. With the above directions, I.A. is disposed of.

7. A copy of this order be given *dasti* under signature of the Court Master.

PRATHIBA M. SINGH, J.

NOVEMBER 26, 2018

Rahul