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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(OS) 659/2011

ANAND PRAKASH BANSAL

..... Plaintiff

Through: Mr. P.S. Vats and Mr. Yogender
Satni, Advocates.

versus

NARESH BATRA

..... Defendant

Through: Mr. Raman Kapur, Senior Advocate
with Mr. Aviral Tiwari, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **16.04.2019**

I.A. 16028/2018 (U/o 18 Rule 3 CPC for leading evidence in rebuttal)

1. The Plaintiff by way of this application seeks to lead rebuttal evidence on issues No. 1, 2 and 3 which were framed on 29th July 2013. The said issues read as under:

“1. Whether the plaintiff has concealed material facts and played fraud upon the defendant? OPD.

2. Whether the plaintiff induced/forced the defendant to sign the Agreement to Sell dated 13th December, 2010? OPD.

3. Whether time was essence of the Agreement to Sell dated 13th December, 2010? OPD.”

2. After the framing of issues, the Plaintiff filed a list of witnesses and named the five witnesses, including a witness named Mr. Vipul Gupta.



Plaintiff filed his affidavit by way of examination in chief and was examined. During the course of the recording of evidence, learned counsel for the Plaintiff made a statement that he is dropping Mr. Vipul Gupta as a witness. This has been recorded in the order dated 6th May 2015. Counsel's statement was also recorded to that effect. The said order reads as under:

“Learned counsel for defendant submits that plaintiff should be asked to file affidavit of Mr. Vipul Gupta before he starts the cross examination of PW1/plaintiff. Submission of learned counsel heard. Learned counsel for plaintiff submits that to avoid delay, he drops Mr. Vipul Gupta. Statement of Learned counsel for plaintiff to this effect is recorded.

Cross examination of PW1/plaintiff recorded in part. His further cross examination is deferred as it is already 04.00 pm.

Put up for remaining cross examination of PW1 on 18th May, 2015 at 02:00 pm.”

3. PW-1 was cross examined on 18th May 2015 and later discharged after completion of his statement on 28th May 2015. On the said date, Plaintiff's evidence was closed and learned counsel for the Plaintiff made a statement to that effect. The relevant portion of the order reads as under:

“Cross examination of PW1 done and he is discharged. PE closed. Separate statement of learned counsel for plaintiff to this effect recorded. Learned counsel for plaintiff wants it to be mentioned in his statement that he had dropped PW Mr. Vipul Gupta in affirmative. Objected to by learned counsel for defendant. The circumstances in which Mr. Vipul Gupta was dropped as a PW are mentioned in the ordersheet dated 06.05.2015. Learned counsel for plaintiff also made his statement on that day separately. It is not required to be mentioned in his statement today that he had dropped Mr. Vipul Gupta in affirmative. The question whether Mr. Vipul Gupta can now be



examined as a PW by the plaintiff will be considered at the appropriate stage.

Affidavit of the DWs be filed within eight weeks with advance copy to learned counsel for plaintiff.”

4. Thereafter, Defendant has led it's evidence. Now, by way of this application, the Plaintiff seeks to examine Mr. Vipul Gupta in rebuttal evidence on the issues No. 1 to 3 noted above. This question was left for consideration at an appropriate stage as recorded in the order dated 28th May 2015.

5. On 11th December 2018, this Court while referring the parties to Mediation centre, had directed the Plaintiff to be present in the Court along with the affidavit by way of evidence of the witness whom the Plaintiff proposes to examine in rebuttal. The draft of the affidavit has been shown to the Court. The Plaintiff proposes to examine Mr. Vipul Gupta in rebuttal evidence on the three issues.

6. Mr. Raman Kapur, learned senior counsel for the Defendant strongly objects to the prayer made in the application on two grounds. Firstly, he states that since the Plaintiff made a statement to drop Mr. Vipul Gupta as his witness without reserving any right to lead rebuttal evidence, he cannot be permitted to examine the said witness. Secondly, he submits that the Plaintiff has already led evidence on the three issues and therefore he should not be permitted to lead rebuttal evidence.



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7. On the other hand, the learned counsel for the Plaintiff urges that the statement recorded on 6th May 2015 to the effect of dropping Mr. Vipul Gupta, as a witness cannot be read to mean that the said witness has been deleted from the list of witnesses. At that stage, Plaintiff was only leading evidence in affirmative and therefore in order to avoid delay, the Plaintiff had elected not to lead Mr. Vipul Gupta in the witness box. This does not mean that he has given up the said witness altogether.

8. This fact is amplified by a subsequent statement recorded on 28th May 2015 which categorically records that the evidence is closed in affirmative. This is also noted in the order dated 28th May 2015. Therefore, to the Court, it is clear that the question of leading Mr. Vipul Gupta into the witness box during rebuttal evidence was left open. Now that the evidence of the Defendant is complete, the Plaintiff should be given the opportunity to lead rebuttal evidence. The objection raised by the Defendant's counsel that the Plaintiff has led evidence on the three issues, would be a question which would require a detailed analysis of the evidence on record. Plaintiff's testimony already on record on the issues 1 to 3 (in affirmative) is not elaborate and thus at this stage, he cannot be denied to counter the evidence led by the Defendant. The proposed affidavit shown to the court is also confined on the three issues.

9. In view of the above, the application is allowed. The Plaintiff is permitted to lead rebuttal evidence of only one witness i.e. Mr. Vipul Gupta.

10. The affidavit of Mr. Vipul Gupta be filed within a period of two weeks



from today with an advance copy to learned counsel to the Defendant.

11. List before the Joint Registrar for fixing the date for cross examination of the witness on 10th May 2019.

APRIL 16, 2019

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SANJEEV NARULA, J