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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 631/2005**
SATISH VERMA

..... Plaintiff

Through: Mr. Swastik Singh, Adv.

versus

JEETINDRA CHURAMANI AND ANR.

..... Defendant

Through: Mr. Rohit Kumar, Adv.

CORAM:

SH. AMIT KUMAR (DHJS), JOINT REGISTRAR (JUDICIAL)

ORDER

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04.11.2016

I.A.No.3423/2016 filed by defendant No.2 recalling PW-1 for further cross-examination.

It is stated in this application that issues in the main suit were framed on 02.02.2006 and additional issues on 23.07.2008 and thereafter issues were further framed in CCP(O) No.60/2009 and I.A. No.9471/2009 on 23.12.2009 and the cross-examination of the plaintiff has been concluded in the main suit but plaintiff is yet to be cross-examined on his affidavit of evidence tendered in the contempt petition on 23.05.2013 and as such defendant should be permitted to cross-examine the plaintiff in CCP(O) No.60/2009 and I.A. No.9471/2009.

The application has been opposed for the reason that the only intention of the defendant is to delay the trial as cross-examination of witness PW-1 has already concluded and matter is at the stage of defendant evidence and the evidence in the matter is recorded together in the suit and

the CCP and the cross-examination was concluded on 17.08.2015 and the defendant did not raise any objection on 17.08.2015 and thereafter on 25.01.2016, 25.02.2016 & 08.03.2016 and the application is frivolous and should be dismissed with cost.

Record shows that plaintiff tendered his affidavit in the suit Ex.PW1/A on 24.04.2009 and his cross-examination was concluded on 10.02.2015. In between issues in the CCP as well as I.A. were framed on 23.12.2009 for which an affidavit in the CCP Ex.PW1/X was tendered on 21.05.2013 along with additional affidavit of evidence Ex.PW1/C in main suit.

Record further shows that while framing of issues on 23.12.2009 in the CCP & I.A. No.9471/2009 the Hon'ble Court observed that evidence in the CCP shall be recorded along with evidence in the main case. The entire cross-examination of PW-1 reveals that it has been conducted only in the main suit and not in the CCP and I.A. Though, the counsel for the defendants should have been vigilant to ensure that the witness is cross-examined also on the affidavit tendered in the contempt Ex.PW1/X. Yet, it is also to be noted that the cross-examination in the contempt affidavit is also essential to decide the issues framed in the contempt petition on 23.12.2009. Though, it is correct that the application is slightly belated but defendant has not yet tendered his affidavit as examination-in-chief of the witness was partly recorded on 25.02.2016 and as such it cannot be said that any prejudice shall be caused to plaintiff if its witness is permitted to be cross examined in the contempt petition. The contempt petition is required to be brought to its logical conclusion which can be done only if the witness is cross-examined in the contempt petition.

The application, therefore, is allowed. The defendant is permitted to cross-examine the witness PW-1, however, with an observation that the cross-examination shall confine only to the contents of the affidavit Ex.PW1/X and shall not transfer beyond that. The application stands disposed of with this direction.

Put up for cross-examination of witness PW-1 on his contempt affidavit Ex.PW1/X for **18th November, 2016**.

I.A. No.3422/2016.

Put up for arguments on this I.A. on **18th November, 2016**.

**AMIT KUMAR (DHJS)
JOINT REGISTRAR (JUDICIAL)**

NOVEMBER 04, 2016/nk