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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 277/2016
CAPITAL LAND BUILDERS (P) LTD Plaintiff
Through: Mr. Abhishek Sharma, Adv.
versus
BHARAT PETROLEUM CORP LTD Defendant
Through: Mr. Anil K. Batra, Adv. for D-1.
Mr. Anish Chawla and Mr. Vinayak
Batta, Advs. for D-2.

AND

CS(COMM) 845/2018
HIGHWAY SERVICE STATION Plaintiff
Through: Mr. Anish Chawla and Mr. Vinayak
Batta, Advs.
versus
BHARAT PETROLEUM CORPORATION LTD.
& ANR Defendants
Through: Mr. Anil K. Batra, Adv. for D-1.
Mr. Abhishek Sharma, Adv. for D-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **23.10.2018**

1. None appears for the plaintiff in CS(COMM) No.277/2016. The counsel for the defendant no.1 in both the suits and the counsel for the plaintiff in CS(COMM) No.845/2018 appear.
2. The counsel for the plaintiff in CS(COMM) No.845/2018 states that issues in CS(COMM) No.845/2018 were framed on 19th April, 2012 and recording of evidence of the plaintiff was underway.
3. Issues in CS(COMM) No.277/2016 were also framed on 26th April, 2017 but recording of evidence has not begun as yet.

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4. Vide order dated 20th March, 2018 in Transfer Petition (C) No.22/2018, CS(COMM) No.845/2018 which was earlier pending before the Court of Civil Judge, was transferred to this Court for trial along with CS(COMM) No.277/2016 in this Court.

5. The counsel for the defendant no.1 in both the suits and the counsel for the plaintiff in CS(COMM) No.845/2018 state that the two suits be consolidated for the purpose of trial. On enquiry, it is informed that the witness of the plaintiff in CS(COMM) No.845/2018 has already been cross-examined by the counsel for the defendant no.1 in both the suits and was under cross-examination by the counsel for the plaintiff in CS(COMM) No.277/2016 who is the defendant no.2 in CS(COMM) No.845/2018.

6. On further enquiry it is stated that Highway Service Station may lead evidence first in the consolidated suits, with effect from the stage till which the evidence has been recorded in CS(COMM) No.845/2018.

7. In the aforesaid state of affairs, it is not deemed appropriate to frame consolidated issues and it is deemed appropriate to allow evidence to be recorded in the consolidated suits in the manner hereinbelow provided.

8. The suits are consolidated for the purpose of trial.

9. The plaintiff in CS(COMM) No.845/2018 to continue leading its evidence, with effect from the stage till which the evidence was recorded in the said suit while pending before the Civil Judge, and the evidence recorded before the Civil Judge will be read as evidence in this Court.

10. The further witnesses if any of the plaintiff in CS(COMM) No.845/2018 to be cross-examined, first by the counsel for the plaintiff in CS(COMM) 277/2016 & CS(COMM) 845/2018

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CS(COMM) No.277/2016 and thereafter by the counsel for the defendant no.1 in both the suits.

11. After the evidence of the plaintiff in CS(COMM) No.845/2018 is concluded, the plaintiff in CS(COMM) No.277/2016 to lead evidence with its witness being cross-examined, first by the counsel for the plaintiff in CS(COMM) No.845/2018 and thereafter by the counsel for the defendant no.1 in both the suits.

12. The defendant no.1 in both the suits to lead evidence thereafter with its witnesses to be cross-examined, first by the counsel for the plaintiff in CS(COMM) No.845/2018 and thereafter by the counsel for the plaintiff in CS(COMM) No.277/2016.

13. Option of having the evidence recorded on commission has been declined.

14. List before the Joint Registrar on 29th November, 2018 for scheduling the dates of trial.

15. The counsel for the plaintiff in CS(COMM) No.277/2016 has since appeared and has been apprised of the order.

RAJIV SAHAI ENDLAW, J

OCTOBER 23, 2018
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