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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 2526/2011
GOVIND PRASAD

..... Plaintiff

Through: Mr.Dhruv Dwivedi, Adv.
versus

SATISH GUPTA & ORS

..... Defendant

Through: Ms. Akanksha Jain, Adv.for D-8, 10,
17 & 19.
Mr. Satyendra Chahar, Adv. for D-9,
11 to 16 & 18.

CORAM:

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

ORDER

% **24.01.2017**

I.A.No. 13209/2016

This is an application filed by the plaintiff under Section 151 CPC seeking closure of the evidence of defendant no. 9, 11 to 16 & 18 and seeking permission to lead evidence in rebuttal.

Defendant no. 8, 10, 17 & 19 have filed reply to this application and has opposed the opportunity to the plaintiff to lead evidence in rebuttal.

As far as defendant no. 9, 11 to 16 & 18 are concerned, it is stated for them that they did not want to lead any evidence in this case.

Statement of the counsel for these defendants has been recorded separately and in view of the submission made, no order is required for closing the evidence of defendant no. 9, 11 to 16 & 18.

As far as liberty to lead evidence in rebuttal is concerned, application is silent as to on what issue the plaintiff wants to lead evidence in rebuttal.

Order 18 Rule 3 CPC provides in respect of leading evidence when several issues are framed. As per this Rule, if the onus of proving certain issues lies on the other party, the party beginning i.e. plaintiff can reserve its right to lead evidence subsequent to the other party has produced his evidence on those issues. Record further shows that when the evidence was recorded before Local Commissioner, counsel for plaintiff closed the evidence in affirmative in October, 2015 but did not specify as to on what issue, plaintiff reserve its right to lead evidence in rebuttal. Today during the course of arguments, it is stated for the plaintiff that since the onus of Issue No. 3, 4 & 5 was on the defendant, plaintiff has right to rebut the evidence led by defendant on these three issues.

In view of the submissions made and considering the fact that Order 18 Rule 3 CPC provides this liberty, plaintiff is given liberty to lead evidence in rebuttal only in respect of evidence led by defendants on Issue No. 3, 4 & 5. It is specified that plaintiff shall not lead any evidence on Issue No. 1 & 2, onus of which was on plaintiff and plaintiff did not earlier lead evidence on these two issues.

IA stands disposed of.

CS (OS) 2526/2011

Matter is pending before Local Commissioner.

Parties to appear before Local Commissioner on 13.02.2017 for fixing the date for recording plaintiff's evidence in rebuttal.

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

JANUARY 24, 2017/nk