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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 683/2015 & CC 55/2015, I.A. 36900/2024
SH. MAHIM PAL KOHLI AND ANR.Plaintiffs
Through: Mr. K. Sunil, Advocate with Plaintiff
No.1 in-person
versus
SH. RAJIV KOHLI & ORS.Defendants
Through: Ms. Anusuya Salwan, Mr. Bankim
Garg and Mr. Rachit Wadhwa,
Advocates for Defendant Nos.1 to 3
Mr. Siddharth Jain, Mr. Sanjay
Kumar Advocates for Defendant No.4
along with LR (Pawanexh Kohli)
+ CS(OS) 1545/2015 & CC 2/2016, I.A. 35878/2024
R C KOHLIPlaintiff
Through: Mr. Siddharth Jain and Mr. Sanjay
Kumar Advocates along with LR
(Pawanexh Kohli)
versus
RAJIV KOHLI & ORS.Defendants
Through: Ms. Anusuya Salwan, Mr. Bankim
Garg and Mr. Rachit Wadhwa,
Advocates for Defendant Nos.1 & 2
Mr. K. Sunil, Advocate for Defendant
Nos.3 & 4 with Defendant No.3 in-
person

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **08.10.2024**

I.A. 7788/2024 in CS(OS) 1545/2015

1. This application under Section 151 CPC has been filed by the Plaintiff for a direction to Defendant Nos.1 and 2 to file their evidence by way of



affidavit.

2. The present suit being CS (OS) 1545/2015 is one for rendition of accounts. It is stated that Plaintiff has been examined. The contesting Defendants are Defendant Nos.1 and 2. Defendant Nos.3 and 4 are supporting Defendants.

3. Learned Counsel appearing for Defendant Nos.1 and 2 raises an objection by stating that since Defendant Nos.3 and 4 are supporting the case of the Plaintiff and they have already filed their evidence by way of affidavit, Defendant Nos.3 and 4 should be examined before Defendant Nos.1 and 2 are directed to file their evidence by way of affidavit. She places reliance upon a Judgment passed by a Co-ordinate Bench of this Court in Mrs. Sarabjit Singh vs. Mr. Gurinder Singh Sandhu & Ors., 2010 SCC OnLine Del 3865. Relevant portion of the said Judgment reads as under:

“7. The aforesaid three authorities which have been cited by the learned senior counsel essentially support the contention that the defendant who is supporting the case of the plaintiff partially or fully must be directed to cross examine the witness of the plaintiff first in comparison to a defendant who is contesting the claim of the plaintiff.

10. None of the parties has cited any judgment of the Apex Court on the point which is raised in the instant case, nor have I been able to lay my hand on any such authority. Under these circumstances, one has to fall back on the judgments which have been cited by the learned counsel for the plaintiff. Out of the three judgments which have been cited by the learned



counsel for defendant No. 1, the judgment in Shah Hiralal Himatlal's case (supra) is passed by the learned Single Judge of the Gujarat High Court way back in 1964 wherein it has been held as under:

“(4) So far as the defendants go, the question which of the defendants should begin has not been dealt with in Order 18, Civil Procedure Code. But on general principle, if any of the defendants supports the plaintiff in whole or in part, then he should address the Court and lead his evidence first before the other defendants who do not support wholly or in part the plaintiff's case. The order in which defendants lead evidence becomes important only when some of them support the case of the plaintiffs in whole or in part while the others do not. If all the defendants completely oppose the plaintiff's case, then the question of order of leading evidence amongst the defendants is immaterial. It is only when the defendants are divided into two groups, one group consisting of the defendants supporting the plaintiff's case in part and the other group consisting of defendants, who do not support the plaintiff's case in any part that the question of order of leading evidence becomes important. In such cases among defendants the order of leading evidence should be as follows :

(1) Those defendants who fully support the case of the plaintiff.

(2) Those defendants who partly support the case of the plaintiff.

(3) Those defendants who do not support the case of the plaintiff in any part.”



A perusal of the aforesaid para of the Judgment would show that the said judgment has categorized the defendants into three essential categories — one who fully support the case of the plaintiff, secondly the defendants who partially support the case of the plaintiff and thirdly those who do not support the case of the plaintiff or any part. It has been held that they will cross examine the witnesses in the same order. The said judgment in the case of Shah Hiralal Himatlal's case (supra) has been followed by Andhra Pradesh High Court in Hymavathi's case (supra). In 2004, Sunil Chhatrapal's case (supra), the issue was examined by the Bombay High Court again where the reference was made to the two judgments of Gujarat and the Andhra Pradesh High Courts and after discussing both these judgments, the learned Single Judge of Bombay High Court has also arrived at the same conclusion that the party who is fully or partially supporting the case of the plaintiff must cross examine the witness of the plaintiff in the first instance as against the party who is contesting the claim of the plaintiff. Reference has also been made to Section 137 of the Evidence Act which lays down that when the witness is examined by way of examination-in-chief, then he will be cross examined by the 'adverse' party. It has been concluded by the Bombay High Court that a party who is supporting the case of the plaintiff either fully or partially cannot be said to be an 'adverse' party in the same sense in which a party is contesting the claim of the plaintiff. It has been observed that in case this order is not followed for the purpose of cross examination, then any



lacunae which is left in the cross examination by the contesting party will be filled up, in the cross examination conducted by the defendants, who are partially or fully supporting the case of the plaintiff. This will be prejudicial to the interest of the contesting party and therefore it has supported the view of Gujarat High Court as well as the Andhra Pradesh High Court.

11. I have gone through the aforesaid three authorities and I find myself to be in agreement with the reasoning given by the Bombay High Court as well as the Gujarat High Court, so far as the order in which the cross examination of the plaintiff's witnesses is to be conducted. The reason for such an order is not far to seek. The Hiralal's case has rightly classified the defendants into three categories — firstly those who are supporting the case of the plaintiff fully, secondly those who are partially supporting the case of the plaintiff and thirdly those who are not at all supporting the case of the plaintiff. The classification of the defendants in the aforesaid three categories must regulate the cross examination of the plaintiff's witness. It may be pertinent here to mention that Section 137 of the Evidence Act also lays down that when a witness enters into a witness box, he will be first subjected to examination-in-chief, then cross examination and thereafter re-examination.

12. The Evidence Act clearly lays down that the scope of cross examination is much wider as it permits a party to cross-examine the witness even regarding his character in order to impeach his credibility. Leading questions which are suggestive of answer can also be asked to the witness. Therefore, in such a contingency where the scope of cross examination is much wider and gives better leeway to the defendant, it cannot be permitted by a party who either fully or partially



supports the case of the plaintiff to cross examine witness after the contesting party has done. If this is permitted to be done, then it will greatly prejudice the rights of the parties who are contesting the claim of the plaintiff. I therefore find myself in agreement with the judgment of Hiralal's case that the party which supports the case of the plaintiff partially or fully must cross examine the witness of the plaintiff first. Accordingly, so far as the facts of the present case are concerned, the defendants No. 3 and 4 are supporting the case of the plaintiff both partially and fully respectively and therefore they must first cross examine the witness of the plaintiff first rather than the defendant No. 1 who is contesting the claim of the plaintiff. I accordingly allow the contention of the defendant No. 1 directing defendant No. 3 and other defendants to cross examine the plaintiff's witness in the first instance before the defendant No. 1 undertakes the cross examination. However, expression of any opinion hereinbefore shall not be deemed to be an expression on the merits of the case."

4. A perusal of the above Judgment reveals that the Co-ordinate Bench of this Court after placing reliance upon the Judgment passed by the Gujarat High Court in Shah Hiralal Himatlal & Ors. v. M.G. Pathak & Ors., **AIR 1964 Gujarat 26** has held that when there are two groups in Defendants, one group supporting the case of plaintiff and one is adverse to the case of Plaintiff then the group of Defendants who support the case of the Plaintiff fully must be examined first before the Defendants who are adverse to the case of Plaintiff are examined.

5. In view of the Judgment passed by the Co-ordinate Bench of this Court in Mrs. Sarabjit Singh (supra), this Court is of the opinion that Defendant Nos.3 and 4 should be examined before Defendant Nos.1 and 2



are directed to file their evidence by way of affidavit.

6. The Ld. Joint Registrar is requested to ensure that the examination of Defendant Nos.3 and 4 is completed before 30.11.2024. After one month from 30.11.2024, the Defendant Nos.1 and 2 are directed to file their evidence by way of affidavit and the examination of Defendant Nos.1 and 2 be conducted immediately in view of the fact that the present suit is of the year 2015. It is expected that the examination of Defendant Nos.1 and 2 will be concluded on or before 28.02.2025.

7. Learned Counsel appearing for the Plaintiff in CS (OS) 683/2015 submits that he is only interested in expeditious conclusion of trial. He states that after the examination of Defendant Nos.3 and 4 in CS (OS) 1545/2015 is concluded, the examination of the Plaintiffs and the supporting Defendants in CS (OS) 683/2015 be completed in the month of December, 2024.

8. Let the examination of the Plaintiffs and the supporting Defendants in CS (OS) 683/2015 be also concluded in the month of December, 2024 itself.

9. List before the Ld. Joint Registrar on 28.10.2024.

SUBRAMONIUM PRASAD, J

OCTOBER 8, 2024

S. Zakir