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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 189/2017, I.A. 11325/2019, I.A. 7451/2022, I.A. 16433/2022,
I.A. 17820/2022, I.A. 3867/2023

MR. RAKESH KUMAR Plaintiff

Through: Mr. R.K. Vats and Ms. Kumari Alka,
Advocates

versus

BAJAJ AUTO LIMITED & ANOTHER Defendants

Through: Mr. Kamaldeep Dayal, Ms. Aanchal
and Ms. Biswabara Dash, Advocates

+ CS(OS) 190/2017, CCP(O) 13/2021, I.A. 4241/2019, I.A. 3191/2021,
I.A. 3192/2021, I.A. 3193/2021, I.A. 16431/2022, I.A. 16432/2022,
I.A. 19336/2022

RAKESH KUMAR Plaintiff

Through: Mr. R.K. Vats and Ms. Kumari Alka,
Advocates

versus

BAJAJ AUTO LTD. AND OTHERS Defendants

Through: Mr. Kamaldeep Dayal, Ms. Aanchal
and Ms. Biswabara Dash, Advocates

+ CS(OS) 127/2018, I.A. 11830/2020, I.A. 11831/2020, I.A.
11832/2020, I.A. 11833/2020, I.A. 11834/2020, I.A. 11835/2020, I.A.
11836/2020, I.A. 17824/2022

RAKESH KUMAR Plaintiff

Through: Mr. R.K. Vats and Ms. Kumari Alka,
Advocates

versus



BAJAJ AUTO LTD. & ORS

..... Defendants

Through: Mr. Kamaldeep Dayal, Ms. Aanchal
and Ms. Biswabara Dash, Advocates

+ CS(OS) 592/2018, CCP(O) 6/2021, I.A. 11837/2020, I.A.

11838/2020, I.A. 3189/2021, I.A. 16434/2022

BAJAJ AUTO LIMITED

..... Plaintiff

Through: Mr. Kamaldeep Dayal, Ms. Aanchal
and Ms. Biswabara Dash, Advocates

versus

RAKESH KUMAR

..... Defendant

Through: Mr. R.K. Vats and Ms. Kumari Alka,
Advocates

+ CS(OS) 130/2019

RAKESH KUMAR

..... Plaintiff

Through: Mr. R.K. Vats and Ms. Kumari Alka,
Advocates

versus

BAJAJ AUTO LTD. & ORS.

..... Defendants

Through: Mr. Kamaldeep Dayal, Ms. Aanchal
and Ms. Biswabara Dash, Advocates

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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07.05.2024

**I.A.11325/2019(numbered as original filed on 21.01.2015 under Order
XVIII Rule 17 CPC) in CS(OS) 189/2017**

1. The present application has been filed on behalf of the Defendant seeking recall of the Order dated 01.08.2014 vide which his right of cross examination of PW-1 has been closed. It is submitted in the application that



there were certain apprehensions in the mind of the Defendant for which they had filed the transfer petitions which eventually was allowed by the Supreme Court and the case has been transferred to this Court. It is submitted that the inability of the counsel for the Defendant to cross examine PW-1 was essentially on these grounds and another opportunity be granted to cross examine PW-1.

2. Learned counsel appearing on behalf of the plaintiff opposed the Application and further submits that PW-1 Mr. Rakesh Kumar is a resident of Bihar and would have to travel to Delhi for the cross examination.

3. **Submissions heard.**

4. Unfortunate situation is evident in the present Suit which was filed way back in 2014 and till date, it is only being adjourned on one ground or the other and PW-1 had been recorded in July 2014 and has not been cross-examined till date. In this backdrop, it is expected that both the counsels shall cooperate and ensure that the expeditious trial of the Suit takes place.

5. Considering the submissions made, the Application is allowed and one opportunity to cross examine PW-1 is granted.

6. List before the learned Joint Registrar for evidence on the plaintiff on 10.07.2024. No further opportunity shall be granted to the Defendants for cross examination of PW-1. The date for cross-examination of PW1 be fixed by the learned Joint Registrar in consultation with the parties.

I.A.16433/2022(under Order VII Rule 11 CPC) in CS(OS) 189/2017

7. List before this Court on 19.11.2024.

I.A.4241/2019(under Order VI Rule 17 CPC) in CS(OS) 190/2017

8. The present application has been filed on behalf of the plaintiff wherein it is submitted that there are some typographical mistakes and some



sentences have been left from being incorporated in the original plaint, which may be permitted to be incorporated by way of Amendment. In para 20 of the plaint “till 31.03.2019” may be added. Further, in Para no. 20 of the plaint after the word Begusarai, the words “till 31.03.2019” may be added.

9. It is further submitted that the plaintiff may be permitted to add new paragraphs *No. 20 A, B and C* to state that the Defendant was called through e-mail dated 07.03.2013 in the office of the Defendant to attend the meeting held in Patna in the presence of President and various other officers of the Defendant. On that date, the Defendant agreed to renew his Dealership Agreement from 07.03.2013 to 19.03.2019 for a period of 6 years and the Renewal Letter was also given to the plaintiff but the same was taken back on the pretext that there was an overwriting and it was required to be signed by Defendant No. 2. It is therefore, sought to be claimed that from these acts of the Defendant, it is established that the Dealership of the plaintiff got renewed from 01.04.2013 to 31.03.2019 by the Defendant. Consequently, he also wants to add in Para 26A the Declaration that he was the Dealer from 01.04.2013 to 31.03.2019 and an injunction that no Dealer be appointed for the said period.

10. Learned counsel for the Defendant has opposed the proposed amendments on the ground that the plaintiff had originally asserted in his plaint that the plaintiff was appointed as a dealer in Begusarai from 2011 to 2013. The Defendants wrongly issued e-mail dated 24.07.2013 to allege poor performance at Begusarai and for causing loss in the business. The Defendant No. 3 threatened via the said e-mail that the Company was appointing a new Dealer and would be shortly advertising for the same.



11. The plaintiff claimed that the letter dated 02.08.2013 of the Defendant was illegal and that the Defendant has no right and authority to appoint a new Dealer and therefore, sought the relief of Prohibitory Decree of Permanent Injunction against the Defendant for directing them to withdraw the e-mail dated 24.07.2013 as being contrary to law and also for Temporary Injunction to withdraw its appointment of a new Dealer in Begusarai. It is submitted on behalf of the defendant that by way of the proposed amendments, an absolutely new case is sought to be setup by asserting that the dealership of the plaintiff got extended till 2019. It is submitted that the proposed amendments completely change the cause of action and therefore, cannot be submitted.

12. The perusal of the original plaint shows that it was limited to Declaration of the letter dated 24.07.2013 for discontinuation of the Dealership of the plaintiff as illegal, but now an absolutely new cause of action is sought to be inserted of there being a continuation of this Dealership.

13. The proposed amendments are beyond the scope of the Suit and also introduces a new cause of action. Therefore the proposed amendments cannot be allowed. The amendment application is hereby dismissed.

I.A.16432/2022(under Order VII Rule 11 CPC) in CS(OS) 190/2017

14. List for arguments on 19.11.2024.

I.A.11830-11836(under Order VIII Rule 1 CPC) in CS(OS) 127/2018

15. The present applications have been filed on behalf of the Defendants for placing the Written Statement on record.

16. It is submitted that the defendants were served on 01.02.2020 and they have filed their Written Statement along with the present application



dated 22.09.2020 seeking condonation of delay in filing the Written Statement and placing them on record.

17. Learned counsel appearing on behalf of the plaintiff has no objection if the application is allowed.

18. The present applications are allowed and the Written Statement is taken on record.

CS(OS) 592/2018 & CS(OS) 127/2018

19. List before the learned Joint Registrar on 10.07.2024.

I.A.11837/2020(under Section 151 CPC) in CS(OS) 592/2018

20. The present application has been filed for setting aside the Order dated 23.06.2016 vide which the Defendant has been preceded ex-parte. It is submitted in the application that the Suit was originally filed in Pune and had been transferred by the Orders dated 18.09.2018 of the Apex Court in Transfer petition titled *Rakesh Kumar v/s Bajaj Auto Ltd.* During these proceedings the Defendant noticed on 01.02.2020 that he has been proceeded *ex-parte* vide Order dated 23.06.2016. He has submitted that his non appearance was only on account of not being aware of the Suit. A prayer is made that the *ex-parte* Order be set aside.

21. Learned counsel appearing on behalf of the plaintiff has opposed the application on the ground that he himself had filed the Transfer Petition in 2014 and his assertion that he was not aware of the ex-parte Order is not borne out of the Court record.

22. **Submissions heard.**

23. Considering that the Suit had been filed in Pune and thereafter, has been transferred by the Apex Court to this Court, and considering the explanations given by the Defendant, the ex-parte Order is hereby set aside.



24. The Written Statement which have been filed along with the application on behalf of the Defendant, is taken on record.

25. List before the learned Joint Registrar for completion of proceedings/Admission Denial of the documents on 10.07.2024.

26. However, the Injunction granted vide Order dated 21.09.2016 shall continue till further Orders.

I.A.11838/2020(for condonation of delay) in CS(OS) 592/2018

27. For the reasons stated therein, the application is allowed.

28. The application is accordingly disposed of.

CS(OS) 130/2019, I.A. 12043-50/2020(under Order VII Rule 11 CPC)

29. List for arguments on the pending applications before this Court on 19.11.2024.

NEENA BANSAL KRISHNA, J

MAY 7, 2024/PT