



\$~12

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 679/2017**
MEX SWITCHGEARS PVT LTD
..... Plaintiff

Through: Mr.Amit Jain, Ms.Nandini
Agarwal, Ms.Sheril
Bhatia, Advocates

versus

OMEX CABLES INDUSTRIES & ANR
..... Defendant

Through: Mr.Vishal Patel, Advocate

CORAM:
JOINT REGISTRAR (JUDICIAL) SH. PURSHOTAM
PATHAK (DHJS)

% **ORDER**
13.12.2022

PW-1 Mr.Tejal Saini is present, however, he is discharged unexamined at the request of Ld. Counsels for parties.

Arguments heard on objections raised by Ld. Counsel for defendants that the evidence affidavit of PW-1 Mr.Tejal Saini should be taken off the record, as the plaintiff has brought some new facts in paragraph no. 12 of evidence affidavit of PW-1 Mr.Tejal Saini, without permission of court.

Ld. Counsel for the defendants submits that the paragraph no. 12 of affidavit in evidence of PW-1 Mr.Tejal Saini go beyond the plaint and some of the facts introduced in the affidavit have no basis in the pleadings.



Ld. Counsel for plaintiff submits that no new fact has been introduced in the affidavit in evidence of substituted witness PW-1 Mr. Tejal Saini and only the recent figures of sales turn over of plaintiff's company have been added, in continuation of the previous figures shown in affidavit of evidence of PW-1 Mr. Jai Kishan.

In the present matter after framing of issues, plaintiff filed an affidavit of evidence of PW-Mr. Jai Kishan Saini, whose examination in chief was recorded on 16.10.2018. Later on plaintiff moved an application for permitting Mr. Tejal Saini to depose as PW-1 in place of Mr. Jai Kishan Saini which was allowed and affidavit in evidence of Mr. Tejal Saini was taken on record.

The objection of defendant is that the plaintiff had added some new facts which were not initially the part of plaint.

I have perused the record. The plaintiff in paragraph no. 12 of plaint has already mentioned the sales turnover of plaintiff's company till the year 2013-14. Even in the evidence affidavit of Mr. Jai Kishan Saini, yearwise details of sales turnover under Trade Mark "MEX" till the year 2016 has been given and same was not objected by defendant at the time of tendering of affidavit of Mr. Jai Kishan Saini.

In paragraph no. 12 of affidavit in evidence of PW-1 Mr. Tejal Saini, the only addition is of the sales turnover of the plaintiff's company for the year 2016-17, 2017-18, 2018-19 and 2019-2020, which is a development subsequent to the filing of suit. It is the data of subsequent years and cannot be said to be beyond the pleadings as the basis of same is already there in the plaint.



Hence at this stage plaintiff cannot be directed to re-file the affidavit in evidence of PW-1 Mr. Tejal Saini or to take it off the record. However, the objections of defendant may be recorded at the time of examination in chief or at the time of cross examination to be decided at appropriate stage.

Put up for PE on 16.02.2023.

**PURSHOTAM PATHAK (DHJS),
JOINT REGISTRAR (JUDICIAL)**

DECEMBER 13, 2022/sk

Click here to check corrigendum, if any