

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

IA No. GA/2/2023
In
CS/16/2021
AMALGAMATED FUELS LIMITED
VERSUS
DEEPAK PURI & ORS.

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 20th February, 2023.

Appearance:

Mr. Avinash Kankani, Adv.
Mr. Sarosij Dasgupta, Adv.
Mr. Suman Majumdar, Adv.
For the plaintiff.

Mr. Utpal Bose, Sr. Adv.
Mr. Rajarshi Dutta, Adv.
Ms. Labanyasree Sinha, Adv.
Mr. Vidhya Bhushan Upadhyay, Adv.
For the defendant nos. 1 & 2.

Mr. Dhruba Ghosh, Sr. Adv.
Mr. K. Thakkar, Adv.
Ms. Suchismita Chatterjee Ghosh, Adv.
Mr. Altamah Alim, Adv.
Mr. Malay Kumar Seal, Adv.
Ms. Ledia Dasgupta, Adv.
For the defendant no.3.

The Court :- This is an application by the defendant no.3 in this suit.

The suit is for recovery of possession and/or eviction. The witness of the plaintiff has been examined in full in chief and has been also cross-examined in full by the defendant nos. 1 and 2. During this stage, the defendant no.3 did not appear although it had entered appearance and filed its written statement. In fact no intimation was given by the said defendant no.3 to either the plaintiff or the defendant nos. 1 and 2 about entering of appearance or of filing of the written

statement. It is, however, now clear that prior to the conclusion of the examination-in-chief and cross-examination of the plaintiff's first witness, the defendant no.3 had entered appearance and filed his written statement. Despite default on the part of the defendant no.3 to intimate about his entering appearance it was also the obligation of the plaintiff and the Court to find out as to whether defendant no.3 entered appearance before proceeding with the suit in his absence.

Considering this factual position, although, this Bench does not appreciate the conduct of the defendant no.3 yet for the ends of justice the defendant no.3 is permitted to disclose his documents by 28th February, 2023. Inspection of such documents shall be offered by 10th March, 2023. Within 10th March, 2023 the defendant no.3 shall take inspection of the documents relied upon by the plaintiff and the defendant nos.1 and 2 as disclosed through the judge's brief of documents. The plaintiff and the defendant nos. 1 and 2 shall also be entitled to disclose additional documents, if any the inspection whereof shall also be given within 10th March, 2023. The plaintiff shall prepare a separate judge's brief of documents containing only the documents that may be disclosed by the defendant no.3 and the additional documents, if any that may be disclosed by the plaintiff and the defendant nos. 1 and 2.

After this entire exercise is complete, the parties shall be at liberty to approach the Registrar, Original Side of this Court for placing the suit in the warning list and then transfer to the list of this Bench within a period of two weeks from the same being placed in the warning list.

The learned Registrar, Original Side of this Court prior to placing the matter in the warning list shall scrutinize the document and ascertain that the suit is otherwise ready for starting the witness action once again. The witness action, however, shall proceed from the stage up to which it has been completed. The order dated 29th July, 2022 discharging the plaintiff's first witness after completion of examination-in-chief and cross-examination is hereby recalled for the purpose of granting the defendant no.3 an opportunity to cross-examine the plaintiff's first witness. It will also be open for the plaintiff and the defendant nos. 1 and 2 to recall the plaintiff's witness for the purpose of further examination-in-chief and cross-examination by the defendant nos. 1 and 2 if necessary to dislodge the claim of the defendant no.3 as made out in his written statement.

The additional issue, if any, required to be framed at the instance of the defendant no.3 shall be done once the suit appears before this Court.

All this exercise permitted to be carried out by the defendant no.3 is subject to the pre-condition of the said defendant paying a cost assessed at 500 G.Ms payable to the High Court Legal Services Committee on or before 27th February, 2023.

It is made clear that unless the cost is paid neither will be the documents that may be disclosed by the defendant no.3 be looked into nor the additional issue as suggested by the said defendant will be framed.

Nothing further remains to be adjudicated in the application.

The application is disposed of.

Since affidavits are not invited, the allegations contained in the application are deemed to have not been admitted by the plaintiff and the defendant nos. 1 and 3.

(ARINDAM MUKHERJEE, J.)

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