

OD – 16 & 22

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

IA NO. GA/4/2024

In CS/264/2012

SRI NIRMAL KANODIA & ORS.

Vs

UMADEVI AGARWALLA & ANR.

With

CS/124/2011

UMADEVI AGARWALLA & ORS.

VS

NIRMAL KANODIA & ORS.

BEFORE:

THE HON'BLE JUSTICE SUGATO MAJUMDAR

Date: 3rd December, 2024

Appearance:

Mr. Sukrit Mukherjee, Adv.

Mr. Karanjeet Sharma, Adv.

Ms. Urmila Chakraborty, Adv.

Ms. Paromita Banerjee, Adv.

Mr. Sayan Dey, Adv.

The Court: GA 4 of 2024 is filed in CS 264 of 2012 by the Plaintiff no. 1 praying for recalling the Defendant's witness Deepak Agarwalla for the purpose of further cross-examination only to the extent of confronting him with the list of

shareholders of Bhumi Minerals Limited. It is contended that the list of shareholders was published by the Ministry of Corporate Affairs, Government of India in the official website on 30/09/2011 and 28/09/2012. In spite of best diligence, these documents could not be discovered or unearthed and incorporated in the list of documents. Now the Plaintiff intends to tender these documents in evidence and confront the Defendant's witness with these documents.

The contention of the application is refuted by the Defendant in terms of their affidavit-in-opposition. It is contended that the instant application is nothing but a ploy to delay the trial. It is contended that the list of shareholders, were in public domain but the Plaintiffs did not make any averment in their own suit in respect of the list of shareholders or brought to the notice of this Court in Judge' Brief of document. It is argued that allowing the present application will be tantamount to departure from the case made out by the Plaintiffs in their own suit, namely, CS 264 of 2012 as well as in the previous suit, namely, CS 124 of 2011. It is contended that at this belated stage recalling of witness is not tenable and should not be allowed. Accordingly, this application should be rejected.

In affidavit-in-reply the Plaintiff submitted that under the law the recalling of witness for production and adducing in documentary evidence can be done at any stage. It is rather the Defendants who have chosen to suppress the documents in order to derive illegal gains and benefits and to prevent effective and complete adjudication of disputes in the suit. Such suppression and concealment is tantamount to abuse of process of the Court.

The Learned Counsel for the Plaintiff, at the time of argument, referred to **K. K. Velusamy Vs. N. Palanisamy [(2011) 11 SCC 275]** and **Ram Rati Vs.**

Mange Ram & Ors. [(2016) 11 SCC 296] to contend that for the aims of justice and complete adjudication of the matter, courts have discretion to recall witness for further examination or cross-examination; it can be reopened and this power is discretionary.

The Learned Counsel for the Defendant submitted that it is not a case where justice will be sub-served in allowing the application. The Learned Counsel argued in the line of written affidavit-in-opposition.

I have heard rival submissions.

The documents were available in public domain in the year 2011 and 2012. These documents were available and ought to be produced. There is no reason why the Plaintiff did not try to find out those documents and why suddenly after examination of witnesses he came across these documents. The Plaintiffs were not diligent and did not care to adduce in evidence these documents. Witnesses were examined and cross-examined extensively. After closer of witness, Plaintiffs suddenly realized to look into the official website of the Ministry of Corporate Affairs, Government of India. It is not so much a question of belated stage. There is no explanation in this respect.

It is true that in appropriate case witness may be recalled. In **K. K. Velusamy's** case (supra), it is clarified by the Supreme Court of India that the power is discretionary and should be used sparingly in appropriate cases to enable the Court to clarify any issue or doubt. It may have in regard to the evidence led by the parties. It is also clarified that this power is not intended to be used to fill up omissions in the evidence of witness. This principle is reiterated in **Ram Rati's** case (supra) that basic purpose of Order XVIII Rule 17 is to enable the Court to clarify any

position or doubt. But that power cannot be stretched to fill up any omission or lacuna in evidence.

In this case, the documents could have been produced at the time of examination of witness, since these documents were in public domain; but it was not produced in course of examination of witness. After closer of witness action, production of these documents is likely to fill up the lacuna and omission in evidence. Unexplained lethargy and long delay in production of document which is otherwise available cannot be cured at this belated stage. Therefore, it is not a fit case where the instant application should be allowed.

Accordingly, the instant application stands dismissed without costs.

The suit will appear in the list on 3rd January 2025 along with CS 124 of 2011 for hearing argument.

(SUGATO MAJUMDAR, J.)