

JGA FASHION PRIVATE LIMITED Plaintiff
Through : Mr. Shyam Moorjhani and
Mr. Kshitij Mittal, Advs.

versus

KRISHAN KUMAR KHANNA & OTHERS Defendants
Through : Mr. Arun Khosla with
Ms. Shreeanka Kakkar, Adv.

CORAM :-**HON'BLE MR. JUSTICE J.R. MIDHA**

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

J.R. MIDHA, J. (Oral)**Review Petition No.79/2011**

1. The plaintiff is seeking review of the order dated 4th February, 2011 whereby this court has issued the notice to the Post Master, Post Office, Tis Hazari Court, Delhi to produce the relevant records with respect to the postal receipts filed by the plaintiff.
2. Learned counsel for the plaintiff submits that summoning the Post Master amounts to commencing inquiry under Section 340 of the Code of Criminal Procedure which shall cause serious prejudice to the plaintiff.

3. The notice to the Post Master has been issued by this court on 4th February, 2011 in order to find out the truth in exercise of the power under Section 165 of the Indian Evidence Act which is reproduced hereunder:-

“SECTION 165. JUDGE'S POWER TO PUT QUESTIONS OR ORDER PRODUCTION –

The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this Section shall not authorize any Judge to compel any witness to answer any question or produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases herein before excepted.”

4. This Section provides plenary powers to the Judge to put any question to any witness or party; in any form, at any time, about any fact relevant or irrelevant. Section 165 is intended to

arm the Judge with the most extensive power possible for the purpose of getting at the truth. The effect of this section is that in order to get to the bottom of the matter before it, the Court will be able to look at and inquire into every fact whatever and thus possibly acquire valuable indicative evidence which may lead to other evidence strictly relevant and admissible. The Court is not, however, permitted to found its judgment on any but relevant statements.

5. **Mr. Edmund Burke** arguing in Warren Hastings Trial said that it is the duty of the Judge to receive every offer of evidence, apparently material, suggested to him, though the parties themselves through negligence, ignorance, or corrupt collusion, could not bring it forward. He has a duty of his own, independent of them, and that duty is to investigate the truth. If no prosecutor appears, the Court is obliged to examine and cross examine every witness who presents himself; and the Judge is to see it done effectively, and to act his own part in it.

6. In **Bartly vs. State, 55 Nebr 294 : 75 N.W.832** **Harrison, C.J.**, said:

“It is undoubtedly necessary that the Judge who presided should acquire as full a knowledge of the facts and circumstances of the case on trial as possible, in order that he may instruct the jury, and correctly, to the extent his duty demands, shape the determination of the litigated matters, that Justice may not miscarry, but may prevail; and doubtless, it is allowable at times, and under some circumstances, for the presiding Judge to interrogate a witness”.

7. The object of Section 165 is, first to ascertain truth and then, do justice on the basis of the truth. The Judge is not only justified but required to elicit a fact, wherever the interest of truth and justice would suffer, if he did not.

8. The framers of the Act, in the Report of the Select Committee published on 1st July, 1871 along with the Bill settled by them, observed as follows:-

“Passing over certain matters which are explained at length in the Bill and report, I come to two matters to which the Committee attach the greatest importance as having peculiar reference to the administration of justice in India. The first of these rules refers to the part taken by the judge in the examination of witnesses; the second, to the effect of the improper admission or rejection of evidence upon the proceedings in case of appeal.

That part of the law of evidence which relates to the manner in which witnesses are to be examined assumes the existence of a well-educated Bar, co-operating with the Judge and relieving him practically of every other duty than that of deciding questions which may arise between them. I need hardly say that this state of things does not exist in India, and that it would be a great mistake to legislate as if it did. In a great number of cases – probably the vast numerical majority – the Judge has to conduct the whole trial himself. In all cases, he has to represent the interests of the public much more distinctly than he does in England. In many cases, he has to get at the truth, or as near to it as he can by the aid of collateral inquiries, which may incidentally tend to something relevant; and it is most unlikely that he should ever wish to push an inquiry needlessly, or to go into matters not really connected with it. We have accordingly thought it right to arm Judges with a general power to ask any questions upon any facts, of any witnesses, at any

stage of the proceedings, irrespectively of the rules of evidence binding on the parties and their agents, and we have inserted in Bill a distinct declaration that it is the duty of the Judge, especially in criminal cases, not merely to listen to the evidence put before him but to inquire to the utmost into the truth of the matter.”

9. The Judge contemplated by Section 165 is not a mere umpire at a wit-combat between the lawyers for the parties whose only duty is to enforce the rules of the game and declare at the end of the combat who has won and who has lost. He is expected, and indeed it is his duty, to explore all avenues open to him in order to discover the truth.

10. The plaintiff has not yet filed the reply to the application under Section 340 of the Code of Criminal Procedure. The plaintiff has also not disclosed its defense to Section 340 of the Code of Criminal Procedure in review application. The contentions of the plaintiff with respect to Section 340 of the Code of Criminal Procedure cannot, therefore, be considered at this stage. The principles regarding the scope of Section 340 of the Code of Criminal Procedure have been set out in the recent judgment of this Court in the case of **Sanjeev Kumar Mittal Vs. The State, 174 (2010) DLT 214** and the contentions of the plaintiff with respect to Section 340 of the Code of Criminal Procedure shall be considered after the plaintiff files the reply to the application and discloses its defence.

11. There is no merit in the application for review which is hereby dismissed.

I.A.No.2656/201

1. Notice. Mr. Arun Khosla, Advocate, accepts notice.
2. The plaintiff is seeking waiver of the cost of ₹50,000/- imposed vide order dated 4th February, 2011 for not filing reply to I.A.No.5855-57/2010 and Crl.M.No.5782/2010 in time.
3. Learned counsel for the plaintiff submits that the notice of the aforesaid applications was accepted by the counsel for the plaintiff on 4th May, 2010 but the reply could not be filed within two weeks as the suit was dismissed in default before the expiry of two weeks on 18th May, 2010. The plaintiff filed I.A.No.8358/2010 for restoration of the suit which was taken up on 1st November, 2010 when the suit was restored subject to the cost of ₹25,000/- and the pending applications were directed to be listed on 29th November, 2010. On 29th November, 2010, the plaintiff was directed to file reply only to I.A.No.5855/2010 under Order VII Rule 11 of the Code of Civil Procedure but there was no direction to file reply to the other pending applications. It is submitted that the delay of nine months from 4th May, 2010 are not attributable to the plaintiff in as much as the suit was dismissed in default on 18th May, 2010 and was restored on 1st November, 2010.
4. In the facts and circumstances stated above, the application is allowed, the cost of ₹50,000/- is waived and the order dated 4th February, 2011 is modified to that extent.

CS(OS)No.66/2010

The learned counsel for the plaintiff has handed over 15 demand drafts totaling ₹24,40,050/- to learned counsel for the defendants in Court today. The learned counsel for the defendants has accepted the said amount without prejudice to the rights and contentions of the defendants. The photocopy of the demand draft is taken on record.

MARCH 08, 2011
mk/aj

J.R. MIDHA, J