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

+ CS(OS) 519/2004 and I.A. No. 612/2015

USHA DRAGER PVT. LTD. AND ANR. Plaintiffs

Through: Mr. Sandeep Mittal, Advocate.

versus

DRAEGERWERK AKTIENGESELLSCHAFT

AND ORS. AC+ Defendants

Through: Mr. N.K. Kantawala, Mr. Vineet
Dwivedi & Mr. Nakul Gandhi,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

26.05.2016

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O.A. No.7/2015

1. I have heard learned counsel for the parties.
2. This chamber appeal is directed against the order dated 22.11.2014 passed by the learned Joint Registrar dismissing the plaintiffs' application being I.A. No.18992/2013 under Order XVI Rule (1)3 CPC read with Section 151 CPC, whereby the plaintiffs sought leave to summon additional witnesses. After the issues were framed, the defendant, who is the plaintiff in the connected suit being C.S. (OS) No.118/2004 was directed to lead evidence first. Accordingly, the defendant examined one witness namely Mr. Reinhard Frick. After examination of Mr. Reinhard Frick, the plaintiff

moved the aforesaid application seeking to lead the evidence of three additional witnesses, namely Dr. R.L. Chaudhary, Dr. Wolfgang Reim and Dr. P. Mahavadi. Thereafter, the plaintiff proceeded to examine one of the named witnesses Mr. A.S. Rajput.

3. I may observe that in the list of witnesses furnished by the plaintiff, the plaintiff has named three other witnesses in part C, whose evidence is yet to be recorded. Apart from that, the plaintiff has named 13 formal witnesses in part B, who are required to produce documents but not required to give oral evidence. The other three part C witnesses as well as the formal witnesses in part C have yet to be examined.

4. The submission of learned counsel for the plaintiff is that the necessity to examine the three additional witnesses, as aforesaid, arose on account of the statements made by Mr. Reinhard Frick during his cross-examination recorded on several dates. Learned counsel for the plaintiff has read the relevant extracts from the cross-examination of Mr. Reinhard Frick.

5. On a perusal of the same, I am satisfied that the plaintiff is justified in seeking to produce the additional witnesses. I may only observe that during his cross-examination Mr. Reinhard Frick, when questioned on certain aspects, stated that he did not have personal knowledge and referred to one or the other persons who are now sought to be produced as additional witnesses by the plaintiff, as the persons who may be possessed of such knowledge and information.

6. In view of the aforesaid circumstances, I am inclined to allow the appeal. I may observe that no prejudice would be suffered by the defendant

since the plaintiff has yet to examine the other named witnesses, as aforesaid.

7. Accordingly, the appeal is allowed. The plaintiff is permitted to examine the additional witnesses. However, the plaintiff shall take steps to produce the said witnesses either on its own or by summoning them without any delay. The concerned Court before whom the matter is pending, shall examine the remaining evidence without any delay. Neither party shall seek nor be granted any adjournment during recording of evidence.

8. The file be transmitted to the learned District Judge (South-East), Saket Courts, Delhi without delay. The parties shall appear before the concerned Court on 25.07.2016, the date already fixed.

VIPIN SANGHI, J

MAY 26, 2016

B.S. Rohella