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

+ **FAO(OS) 439/2015 & CM 14391/2015**

RAJAT SIKKA

..... Appellant

Represented by: Mr.Sanjeev Sindhvani, Sr.Adv.
instructed by Mr. Amitabh
Chaturvedi and Mr. Sumit
Kumar Shula, Advs.

versus

KANAN BALA SIKKA & ANR

..... Respondent s

Represented by: Mr. Prabhjit Jauhar, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
24.02.2016

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1. Rajat Sikka, the appellant herein filed a civil suit being CS (OS) No. 345/2010 against his mother Kanan Bala Sikka and sister Ritu Khanna seeking declaration and injunction for enforcing a settlement arrived at between the family members of late Shri R.P.Sikka whereas respondent No.1 Kanan Bala Sikka filed CS(OS) No.2044/2011 seeking partition of the properties left behind by her late husband Shri R.P. Sikka.
2. Rajat Sikka filed two applications being IA Nos. 895/2014 and 6959/2014 while examination of witnesses were going on which have been decided by the impugned order dated May 07, 2015. In IA No.895/2014 the prayer was to permit examination of Mr.Jawahar Lal Khajuria S/o late Shri Jia Lal Khajuria R/o A1/39, Safdarjung Enclave, New Delhi-110029 as

plaintiff's witness without applying for summons and directions to learned Local Commissioner to record the evidence of Mr. Jawahar Lal Khajuria as plaintiff's witness. In IA No.6959/2014 under Order XVI Rule 1 and 2 read with Section 151 CPC the prayer of Rajat Sikka was to summon witnesses. In the list of witnesses, he mentioned at Sr.No.I witnesses from Kandla Port Trust and in the alternative he wanted to examine the Estate Manager from the Kandla Port Trust. With regard to witnesses to the transaction of sale of Gandhidham property he wanted to examine the concerned officer/clerk of the office of Sub-Registrar, Gandhidham (Kutch) Gujarat or Shri Nemi Chand S. Jain or Shri Karna Bhai Bhura Bha Rabari or Smt. Keshar Ben Hansraj Rathore. With respect to witnesses from bank, Rajat Sikka sought summoning of bank manager or concerned officer/clerk of Indian Overseas Bank in respect of Account No.0024100000003580 and Bank Manager, Standard Chartered Bank Greater Kailash, New Delhi. He also prayed for summoning witnesses from Security Agencies mentioned at Sr. Nos.29 to 33 of the list of witnesses dated February 21, 2013. Finally he sought to summon Shri Sanjay Khanna to prove the existence of Wills dated June 26, 1989 and March 16, 2004 and also the oral family settlement entered into between the family members. On the two applications, the learned Single Judge passed the impugned order, the relevant portion thereof reads as:-

“The aforementioned applications (subject matter before this Court) have been filed thereafter. This Court has examined the list of witnesses which have been filed of which there are 34 in the first list and eight in the second list.

Detailed submissions have been made by the learned counsel for the plaintiff on the relevancy of each witness which have been detailed in the first list of witnesses (dated 21.02.2013). The witnesses at serial Nos. 1, 2, 3, 6, 7 & 12

already stand examined. The witnesses at serial Nos. 4 & 5 have been given up. So also the witnesses at serial Nos. 19 to 23. The witnesses at serial No. 18 Nemi Chand Jain stated to be a witness to a sale of a property of the deceased relating to Kandla Port Trust is permitted to be examined. The witnesses at serial Nos. 9 to 11 have not been pressed and so also the witnesses at serial Nos. 13 to 16. Learned counsel for the plaintiff submits that the witness at serial No. 17 is the officer of the World Bank in respect of world bank bonds held by R.P. Sikka and needs to be examined. This submission of the learned counsel for the plaintiff is ill-founded. Admittedly the bonds held by R.P. Sikka were sold after his death (1993) in the year 1994. This being an admitted position what would be the relevancy of an officer from World Bank to depose qua these bonds has not been explained. This witness is dropped from the list of witnesses. Learned counsel for the plaintiff is also not pressing to examine the witnesses at serial Nos. 24 to 28 and 34. The witnesses at serial Nos. 29 to 33 are for the purpose of substantiating the submission of the plaintiff that he had paid for the security of the house of the deceased. This position is not disputed by the learned counsel for the defendants. Accordingly, these witnesses are not pressed for examination.

In the second list of witnesses (dated 28.02.2013) which is the additional list, the witnesses at serial Nos. 1, 2, 6, 7 & 8 have not been pressed. Learned counsel for the plaintiff submits that the witnesses at serial Nos. 3 & 4 are relevant as they would depose about the family settlement purported to have been executed by R.P. Sikka in their presence which was in September, 1997. There is however no such pleading. Evidence cannot go beyond pleadings. These witnesses cannot be examined. The witness at serial No. 5 is also not necessary to be examined in view of the statement made by the learned counsel for the defendants that admittedly the company Khabors Steel (India) Ltd. was registered under the Board of Industrial and Financial Reconstruction (BIFR) in the year 1988- 1989.

This answers the prayer made in both the aforementioned applications. This exercise has been done by the Court and the

Court has spent its valuable time (more than 1- ½ hours) in which the Court has gathered the impression which was the plea of the defendants that this whole exercise for examination of so many witnesses by the plaintiff was only to delay the trial.

This submission of the learned counsel for the defendants as also in view of the earlier order dated 20.09.2013 which had noticed the conduct of the plaintiff which was primarily to delay the proceedings as far as possible, the applications are disposed of but with costs quantified at Rs.25,000/-.

Since this Court has allowed only one more witness i.e. witness at serial No. 18 Nemi Chand Jain, the plaintiff will take all necessary steps to summon the said witness.

This Court has been informed that the evidence which is in progress and which was earlier being conducted by the Local Commissioner Mr. V.K. Makhija, Senior Advocate is stated to be suffering from medical ailment. They accordingly pray that Mr. S.K. Tandon (retired) Additional District Judge (who had also dealt with the evidence sometime) may be re-appointed. Accordingly, Mr. S.K. Tandon is appointed as Local Commissioner to conduct the evidence in the matter. The fee of the Local Commissioner is fixed at Rs.12,500/- per witness.

List before the Local Commissioner for directions on 22.05.2015.”

3. Before this Court, Rajat Sikka confines his prayer for summoning of four witnesses. They are :-

“Part-B (Witnesses required to produce documents only, and who are not required to give oral evidence)

Sr. No.	Full name and complete address	Facts sought to be proved by the evidence of the witness	Documents sought to be proved by the evidence of the witnesses
1.	Bank Manager or concerned officer/clerk, Indian Overseas Bank, Greater	To prove the fact of operation of locker after filing	Records of operation of locker for the

	Kailash Branch, in respect of the account No.0024100000003580 of the appellant along with relevant bank records and also in respect of bank account of respondent No.1 and locker No.124 of the respondent No.1.	of suit (25.02.2010) till date of execution L.C. in terms of order dated 29.07.2011 of Single Judge.	period starting from 25.02.2010 till 31.08.2011.
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Part-D (Witnesses required to give oral evidence but from whom no documents are required to be proved.)

Sr. No.	Full name and complete address	Facts sought to be proved by the evidence of the witness
1.	Mr. Jawahar Lal Khajuria (brother-in-law of Respondent No.1) R/o A-1/39, Safdarjung Enclave, New Delhi-110029.	1. To prove the existence of the Will dated 26.06.1989 executed by Mr.R.P.Sikka. 2. Existence of Will dated 16.03.2014 executed by Respondent No.1. 3. To prove the oral family settlement between the parties and also that it was acted upon.
2.	Mr. Sanjay Khanna R/o 5, Pearl Lane, DLF Chatterpur Farm, Chatterpur, New Delhi-110030.	To prove oral family settlement between the parties and also that it was acted upon.
3.	Mr. Rahul Soni R/o B-62, Greater Kailash-I, New Delhi-110048.	To prove oral family settlement between the parties and also that it was acted upon.

4. Learned Single Judge while declining the permission to summon these four witnesses dealt only with the fact that in the suit main issue was with regard to the legality and validity of the Will set up by Rajat Sikka and failed to notice that besides proving the legality and validity of the Will, the

plaintiff had to prove the oral settlement as well. Mr.Jawahar Lal Khajuria is the uncle of Rajat Sikka and brother-in-law of Kanan Bala Sikka. If Rajat Sikka is able to prove an oral family settlement from the evidence of Jawahar Lal Khajuria in view of his relationship with Kanan Bala Sikka he may not be termed as an interested witness and his statement having some evidentiary value may substantiate the claim of Rajat Sikka. In case Mr.Jawahar Lal Khajuria is not able to prove oral family settlement or that the parties acted thereupon, Rajat Sikka needs to fall back upon Sanjay Khanna. Thus, Rajat Sikka is required to examine these two witnesses.

5. Regarding the Bank Manager or concerned officer/clerk of Indian Overseas Bank, Greater Kailash Branch in respect of account No.0024100000003580, Rajat Sikka seeks to prove operation of the locker after filing of the suit till the date of execution of Local Commission in terms of order dated July 29, 2011 of the learned Single Judge. This witness would be relevant to prove the conduct of the party in case the locker has been operated after filing of the suit and before execution of the Local Commission.

6. Consequently, IA 895/2014 is allowed. Appellant Rajat Sikka is granted leave to examine Mr.Jawahar Lal Khajuria S/o Late Shri Jia Lal Khajuria R/o A1/39, Safdarjung Enclave, New Delhi-110029 as plaintiff's witness without applying for summons on the date convenient to the parties before the learned Local Commissioner. IA 6959/2014 is partially allowed permitting Rajat Sikka to summon the Bank Manager or the concerned officer/clerk of Indian Overseas Bank, Greater Kailash Branch in respect of account No.0024100000003580 along with bank record. Rajat Sikka is also permitted to summon Sanjay Khanna as a witness. It may be noted that in

IA 6959/2014 Rajat Sikka had not sought to summon of Rahul Soni. Thus, the prayer of Rajat Sikka before this Court to permit him to also summon Rahul Soni cannot be allowed. The order dated May 07, 2015 of learned Single Judge is modified to the extent as aforesaid.

7. Appeal and application are disposed off.

8. No costs.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

FEBRUARY 24, 2016
‘v mittal’