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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) No.721/2017 & CM No.24956/2017 (for stay).
MANBIR SINGH OBEROI Petitioner
Through: Mr. Abhishek Singh, Adv.
versus
JAGDIP KAUR & ANR Respondents
Through: Mr. Amit Bhagat and Ms. S. Chopra,
Advs. for R-1.
Mr. Rajnish Kumar and Mr.
Amrendra Singh, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **30.08.2017**

1. This order is in continuation of the earlier order dated 18th July, 2017.
2. The counsel for the respondent no.1 / plaintiff appears and has been heard.
3. The counsel for the respondent no.1 / plaintiff has raised two contentions. Firstly it is contended that whatever the petitioner / defendant no.2 wants to summon from the respondent no.2 / defendant no.1 Bank of India (BOI) should be summoned at the stage of the petitioner / defendant no.2's own evidence and cannot be permitted to be summoned at the stage of cross-examination by the petitioner / defendant no.2 of the respondent no.1 / plaintiff. Reference in this regard is made to Order XVI Rule 6 of the Code of Civil Procedure, 1908 (CPC) and to *Bathina Koteswara Rao Vs. Gollapudi Masthan Rao* 1999 SCC OnLine AP 773. The second contention is that the filing of the application resulting in the order impugned in this petition and this petition is dilatory.

4. As far as the second of the aforesaid contentions is concerned, once the impugned order has permitted the petitioner / defendant no.2 to re-call the respondent no.1 / plaintiff for cross-examination and which order has attained finality, the request of the petitioner / defendant no.2 for summoning of record from the respondent no.2 / defendant no.1 BOI for the purposes of the said cross-examination cannot be said to be dilatory. There is thus no merit in the said contention.

5. As far as the first contention is concerned, neither Order XVI Rule 6 of the CPC nor the dicta in *Bathina Koteswara Rao* supra provides / holds what is being contended. It is always open to a cross-examining party to, for the purposes of cross-examination of the witness of the opposite party, summon the records and the said request cannot be denied on the ground that the said record should be summoned by the cross-examining party at the stage of its own evidence. This is more so, when the counsel for the respondent no.1 / plaintiff has himself stated that the respondent no.1 / plaintiff for the purposes of her deposition had summoned the record from respondent no.2 / defendant no.1 BOI. Once the petitioner / defendant no.2 has been given right of cross-examination, it has to necessarily include , if so desired, the record on the basis of which deposition was made and any other record which the respondent no.2 / defendant no.1 BOI is in possession of and which may be summoned. There is thus no merit in the said contention either.

6. The petition is accordingly allowed.

7. The impugned order dated 7th June, 2017 to the extent it dismisses the application of the petitioner / defendant no.2 for summoning from the

respondent no.2 / defendant no.1 BOI certain records for the purposes of cross-examination of respondent no.1 / plaintiff is set aside and the petitioner / defendant no.2 is permitted to summon the said record from the respondent no.2 / defendant no.1 BOI for the purposes of cross-examination of the respondent no.1 / plaintiff.

8. On enquiry it is informed that the respondent no.1 / plaintiff did not appear before the Court Commissioner on 22nd July, 2017 (wrongly recorded in the order dated 18th July, 2017 as 22nd August, 2017) and the Court Commissioner has now scheduled the recording of evidence on 31st August, 2017 and 6th September, 2017.

9. The counsel for the respondent no.2 / defendant no.1 BOI on enquiry states that the concerned official of the respondent no.2 / defendant no.1 BOI shall appear before the Court Commissioner on 31st August, 2017 along with the records mentioned in the application aforesaid and if the said records are not available, make a suitable statement with respect thereto.

10. If for reason not attributable to the petitioner / defendant no.2, the recording of such evidence is not completed on 31st August, 2017 the aforesaid to continue to apply for subsequent date/s. It is however made clear that the petitioner / defendant no.2 shall not seek any adjournment for the purposes of cross-examination of the respondent no.1 / plaintiff.

11. The petition is disposed of.

Dasti under signature of Court Master.

RAJIV SAHAI ENDLAW, J

AUGUST 30, 2017

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