

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
JUDGE'S ORDER NO. 65 OF 2017
IN
SUIT NO. 2063 OF 2001

Neeru Batra	...Applicant
<i>In the matter between</i>	
Jaswinder Paul Batra & Ors	...Plaintiffs
<i>Versus</i>	
Neeru Batra Ahluwalia & Ors	...Defendants

Mr Kamal Khata, *i/b Akshay Vani, for the Plaintiffs.*
Mr Vibhav Krishna, *i/b Sharath Pai, for Defendant No.1 &*
Applicant in Judge's Order No. 65 of 2017, Judge's Order No.
66 of 2017 and Judge's Order no. 77 of 2017
Mr Rishabh Seth, *with Ms Neha Shah, i/b MS Bodhanwala &*
Company, for Defendant No.3.

CORAM: G.S. PATEL, J
DATED: 19th April 2018

PC:-

1. Heard. The application is by the 1st Defendant in this Suit for administration of the estate of one Jaswinder Singh Premi. The 1st Plaintiff is the son of Jaswinder Singh Premi. He is the husband of Mrs Sharan Premi. Plaintiff No. 3 is their daughter. Defendant No. 1A, the present Applicant, is the daughter of the original 1st Defendant, who is cousin of the deceased Jaswinder Singh Premi.

2. The Plaintiffs have closed their case. The 1st Plaintiff was cross-examined quite extensively. In the course of that cross-examination Plaintiff No. 1 said that he would also be leading evidence of his sister, one Manjit Anandani (“**Manjit**”) who lives in New York, USA. In any case, Manjit’s name was listed by the Plaintiffs as one of the witnesses that the Plaintiffs proposed to call. The Plaintiffs did not in fact call Manjit as a witness. They closed their case without her evidence.

3. The present Judge’s order is by Defendant No. 1A, and in my view it is not only thoroughly misconceived but a practice of Advocates that has been deprecated time and again, of one party calling as his own a witness of the opposite party.

4. The Judge’s Order seeks the issue of a letter of request to Manjit and for directions for her cross-examination by video-conferencing. Even if I was inclined to pass an unguarded order for cross-examination by video-conferencing, which I am not and never have been, for I believe that sufficient safeguards and protocols must be put in place to avoid future controversies and a possible disruption of the integrity of the trial, this concept that just because one party has not led evidence of a named witness, therefore it is open to the opposite party to call that very person is entirely incorrect and erroneous. It is a practice that has been deprecated by courts over and over again.¹ If the Plaintiffs listed Manjit as a witness and then did not call her, it is always open to the Defendant

1 *Kishori Lal v Chunni Lal*, 31 All 116 (PC); *Mahunt Shatrugan Das v Bawa Sham Das*, AIR 1938 PC 59; *Pirgonda Hongonda v Vishwanath Ganesh*, AIR 1956 Bom 251; *Suresh v Uttam*, (2012) 5 Bom CR 495.

No. 1A or any of the Defendants to submit that the best evidence was not led, was kept from the Court and that an adverse inference must follow. This is, however, no justification for calling the witness of opposite party whose evidence was not taken. This way lies only complication. I have very little doubt that the moment such an order is passed an application will be made, also incorrectly and without basis in law, that Manjit must technically be declared hostile and, therefore, permission must be granted to the Defendant No. 1A to cross-examine the very witness to whom the Defendant No. 1A herself sought to issue a letter of request. This is also an incorrect practice.²

5. In my view, this entire practice is untenable and misconceived.

6. The Judge's Order is dismissed. There will be no order as to costs.

7. The trial is complete. The Suit is ready for hearing and final disposal.

8. Parties and Advocates will coordinate with the Registry of this Court to re-arrange the record in a proper fashion with running pagination and an index. Preferably a separate compilation, corresponding to that of the advocates, and on white paper should

2 *Sat Paul v Delhi Administration*, (1976) 1 SCC 727; *Shri Rabindra Kumar Dey v State of Orissa*, (1976) 4 SCC 233; *Gura Singh v State of Rajasthan*, (2001) 2 SCC 205; *Baikuntha Nath Chatteraj v Prasanamoyi Debya*, (1922) 44 MLJ 699 (PC).

be prepared for use by the court. If the compilation is in multiple volumes, there should be running paging for the entire record. The volumes are to be serially labelled, *Vol. 1 of XX*, *Vol. 2 of XX*, etc.

9. Once the record is arranged, it is to be digitized. Soft copies are to be made available to the Advocates of both sides on request and without charge.

10. List the Suit on the weekly board of 18th June 2018 for hearing and final disposal.

11. At that time, submissions as to objections taken during cross-examination and any documents remained to be marked in evidence will be taken up.

(G. S. PATEL, J)