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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
JUDGE'S ORDER NO. 66 OF 2017
IN
SUIT NO. 2063 OF 2001

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

Mr Vibhav Krishna, *with Mr Sharath Pai & Mr Tahir Prande, i/b Sharath Pai, for the Applicant and Defendant No.1.*
Mr Kamal Khata, *with Mr Akshay Vani & Mr Aditya Manjrekar, for the Plaintiffs.*
Mr Rushabh M Sheth, *with Ms Neha M Shah, i/b MS Bodhanwalla & Company, for Defendant No.3.*

CORAM: G.S. PATEL, J
DATED: 7th January 2019

PC:-

1. This is an Application by the 1st Defendant to issue a letter of request to one Manjit Anandani (“**Ms Anandani**”) a daughter of the deceased Jaswant Singh Premi. Ms Anandani lives in New York, USA. The application is to issue a letter of request to her to give evidence and to produce documents.

2. The matter already has a history. When the application was first made before me, by my order dated 19th April 2018, I rejected it. I did so because the very same person, Ms Anandani, whom the 1st Defendant wishes to summon previously featured on the Plaintiffs' list of witnesses. The Plaintiffs, however, never led the Ms Anandani's evidence at all; and it was then that the 1st Defendant filed this application asking for a letter of request to be issued to her. In my order of 19th April 2018, I took the view that it was a deprecated practice for one party to call the other party's witness.

3. The matter was carried in Appeal. By their Judgment dated 26th September 2018, the Division Bench (AS Oka & MS Sonak JJ) considered the issue of law and modified the order of 19th April 2018. The Judge's Order was restored to file and it was then left open for appropriate orders on merits. This was because I had rejected the Judge's Order on the limited ground of maintainability and not addressed the merits. The Division Bench, on a consideration of law, held that the practice that is deprecated is of a party calling the other *party* as a witness, and that is the most that is deprecated. There is no bar of any kind on a party summoning as his witness a person who is or was proposed to be called as a *witness* by the opponent. This is a significant distinction and it makes all the difference to the present case simply because Ms Anandani was not a party plaintiff. The application today is not by the 1st Defendant to call any of the Plaintiffs as a witness, but to call a person who once featured on the Plaintiffs' list of witnesses.

4. Having regard to these circumstances, obviously the question to be considered is whether the Plaintiffs can today make out a case why Ms Anandani should *not* be summoned or should not be requested to give evidence and to produce documents. As to the reasons why she should be issued a letter of request, in the Affidavit in Support, the 1st Defendant says that Ms Anandani's evidence is required in regard to details of FCNR Accounts with the 3rd Defendant (Vysya) Bank, Connaught Place Branch, New Delhi and transactions and correspondence of June to August 1995. Mr Khata for the Plaintiffs point out that the two documents listed in the Affidavit in Support of 19th July 1995 and 7th August 1995 are already marked in evidence as Exhibits "P1/72" and "P1/6". It is his submission that the documents will speak for themselves and that there is nothing that Ms Anandani can add to either. It is also his submission that the Court must satisfy itself as to the evidence that Ms Anandani is likely to give, assess that evidence and then decide whether to issue the letter of request or not. I will consider this second submission a littler later in this order.

5. It seems to me that Mr Krishna for the 1st Defendant is right, and for more than one reason, in view of the law as interpreted by the Division Bench in appeal. That appellate decision makes it clear that there is no threshold bar to such an application. On merits, it is absolutely impossible for the Plaintiffs now to say that Ms Anandani is an outsider or that her evidence is irrelevant. Clearly she is not. She featured on the Plaintiffs' own list of witnesses. It is correspondence between her and Vysya Bank that has been marked in evidence. What has been denied to the 1st Defendant is every opportunity to cross-examine Ms Anandani on precisely that

correspondence that she had with Vysya Bank. Mr Khata may be correct in saying that she cannot be cross-examined on what the documents say, for they will speak for themselves, but she can certainly be cross-examined, as the author of one of the two documents and as the recipient of the other, about all surrounding circumstances, events, undocumented exchanges and so on. The fact that two documents have been admitted cannot be a reason to shut out this evidence.

6. The broader proposition that Mr Khata canvasses is, I believe, somewhat inaccurate in the facts and circumstances of this case, and is perhaps also too broadly placed. It is true that no Court is bound to issue a witness summons or a letter of request just to cater to the whim of any party before the Court. Of course the litigant must show that proposed evidence will have a material bearing on the trial. Irrelevant evidence cannot be summoned just for the asking. It is in this context that one must appreciate the decision cited by Mr Khata in *Yashpal Sawhney v Gandotra Traders and others*¹, where AM Mir J had before him a suit for recovery of possession on a *bona fide* requirement, and the proposal was to lead the evidence of 59 persons without any attempt being made to show how their evidence was even remotely relevant to the issue before the Court. As I have noted, the relevance of Ms Anandani's testimony cannot be questioned, simply because she was herself a witness proposed by the Plaintiffs. But the matter has actually gone beyond that. There is now on the record of the trial of the Suit a letter written by Ms Anandani herself and another letter written to her and that puts the question of relevance of her evidence beyond

¹ AIR 1995 32 J & K 32

all controversy. Mr Khata's submission that I should assess first what it is that Ms Anandani is likely to say (or be asked), test that evidence and then issue the letter of request, is not one that commends itself. It appears to me to postulate a trial before a trial, or evidence being given before evidence is allowed to be given. I also cannot accept the next submission that I should weigh that 'potential' evidence. This is not the time for that. Returning very briefly to the two documents cited, and specifically Exhibit P1/72, it is clear that this document was marked without its author being examined, though alive and available, by one of the other modes permissible in law. That is a letter from Ms Anandani to Vysya Bank. As the author, she has not been cross-examined on it, and I find it exceedingly strange that the Plaintiffs, who introduced that document of her authorship, though through some other route, should so vehemently object to having her say anything at all about it.

7. There is perhaps another way of approaching this. What is Ms Anandani had featured on the list of witnesses of both sides? Could the Plaintiffs then have opposed her being called by the 1st Defendant? If not, then the mere fact that she was *not* cited as a witness by the 1st Defendant cannot be a reason to deny the request.

8. The Affidavit in Reply seems to suggest that I should, at this stage itself, decide on the sufficiency of each side's evidence. The application is, the Reply says, only dilatory. Nothing will be gained by Ms Anandani's evidence. That is the purest speculation on the Plaintiffs' part; I know nothing of the kind, and I am not prepared to hazard any guess as to the nature, value or weight of Ms Anandani's

evidence *even before she gives it*, which is, very shortly stated, what Mr Khata asks me to do.

9. I do believe it is necessary to clarify that the fact that Ms Anandani was on the Plaintiffs' list of witnesses does not mean that the 1st Defendant is now automatically entitled to cross-examine her and in fairness that is not even Mr Krishna's suggestion. He says she will file her evidence in lieu of examination-in-chief as any other witness would have done. Mr Khata is also correct that what is required to be done is not to issue a witness summons but a letter of request. There is no need for further authority in this regard.

10. On balance I am not satisfied that there is any legitimate or sufficient reason to deny the request on merits having regard to the facts and circumstances of the case. I will allow the Judges' Order but to the extent of issuance of a letter of request rather than a witness summons. The letter of request is returnable after eight weeks.

11. I will list the matter for directions on 4th March 2019.

(G. S. PATEL, J)