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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **FAO(OS) (COMM) 51/2019 & CM APPL. 10061/2019**

HEMANT JAIN

..... Appellant

Through: Mr. Rakesh C. Agarwal, Advocate.

versus

RISHI RAJ & ORS

..... Respondents

Through: Mr. Harish Malhotra, Advocate with  
Mr. Rajender Agarwal, Advocate for  
Respondent No. 1.

**CORAM:**  
**JUSTICE S.MURALIDHAR**  
**JUSTICE SANJEEV NARULA**

**ORDER**  
**07.03.2019**

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1. This is an appeal directed against the impugned order dated 14<sup>th</sup> February 2019 passed by the learned Single Judge in Civil Suit (Commercial) No. 551/2016 in which the present Appellant is the Defendant No. 1.

2. Respondent No. 1, in the present appeal, is the Plaintiff in the suit.

3. The suit was for permanent injunction and rendition of accounts in respect of certain motion pictures. The further details as regard the said suit need not be discussed at this stage since the impugned order which is an interlocutory one is on a very limited aspect which is evident from the text of the order which reads as under:-

“Today also, neither the defendant No.1 is personally present in Court nor the Death Certificates of defendants No.6 to 8 have been filed.

Learned counsel for defendant No.1 states that defendant No.2 is suffering from Dengue.

However, no application for exemption has been filed on behalf of the defendant No. 1.

Since it is the case of defendant No.1 that he is suffering from Dengue, the said defendant is directed to produce a medical certificate from a Government hospital on the next date of hearing.

It is pertinent to mention that defendant No. 1 had not appeared even on 19<sup>th</sup> December, 2018 and 08<sup>th</sup> January, 2019 despite specific directions.

Learned senior counsel for plaintiff states that defendant No.1 is not appearing as non-bailable warrant of arrest has already been issued against him by the Bombay Court.

Last and final opportunity is granted to the defendant No.1 to personally appear before this Court on 08<sup>th</sup> March, 2019 as this Court intends to record his statement under Order X CPC.

A draft questionnaire is directed to be filed by the plaintiff in a sealed cover within ten days.

List on 08<sup>th</sup> March, 2019.”

4. It is thus be seen that all that the learned Single Judge has directed is that the present Appellant should personally appear before the Court on 8<sup>th</sup> March 2019 for his statement to be recorded under Order of the Code of Civil Procedure 1908 (‘CPC’).

5. In this context, it will be useful to reproduce Order 10 Rule 2 of CPC which reads as under:-

“Order X Rule 2

2. Oral examination of party, or companion of party—

(1) At the first hearing of the suit, the Court—

(a) Shall, with a view to elucidating matters in controversy in the suit examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and

(b) May orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in Court or his pleader is accompanied.

(2) At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied.

(3) The Court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party.”

6. It is thus seen that under Order X Rule 2 (3) CPC, the Court in its discretion can put questions to a party including those “suggested by either party”. In the present context, if the Plaintiff were to be examined, the Court

can put questions suggested by the Defendant and vice-versa.

7. The mere fact that the Court has asked the Plaintiff to suggest questions that can be put to the Defendant does not per se prejudice the rights of the Defendant in any manner whatsoever. It is only an aid to the exercise of the discretionary power of the Court to put questions.

8. In that view of the matter, on merits, the Court finds that the impugned order does not call for any interference whatsoever.

9. This conclusion is without prejudice to the preliminary objection raised by the Respondent as to the maintainability of this appeal. It is pointed out that under the proviso to Section 13 (1A) of the Commercial Courts Act 2015, the appeal would not be maintainable as it is outside the scope of the appealable orders enumerated in Order XLIII CPC. Mr. Harish Malhotra, learned Senior Counsel for the Respondent/Plaintiff had placed reliance in ***Econ Puri Consortium v. Puri International P. Ltd*, 159 (2009) DLT 458 (DB)** and ***Gautam Adani v. Container Corporation of India*, 150 (2008) DLT 281 (DB)**.

10. In seeking to meet the above objection, learned counsel for the Appellant placed reliance on the judgment in ***Eros Resorts & Hotels Ltd v. Explorer Associates Pvt. Ltd* 251 (2018) DLT 101 (DB)**.

11. Considering that this Court is not inclined to interfere with the impugned order on merits, the above question regarding the maintainability of the

appeal is left open for consideration in another appropriate case.

12. The appeal along with pending application are accordingly dismissed.

**S. MURALIDHAR, J.**

**SANJEEV NARULA, J.**

**MARCH 07, 2019**

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