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

+ **FAO(OS) 43/2024 & CM APPLs. 20338/2024, 20340/2024**

JANAK DATWANI

..... Appellant

Through: Ms. Bhumi Agarwal and Mr. Dhruv
Gupta, Advocates

versus

CNA EXPORTS PVT LTD & ORS.

..... Respondents

Through: Mr. Vivek Sharma, Ms. Mamta
Gautam and Mr. Aditya Jain,
Advocates for R-6

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Date of Decision: 05th April, 2024.

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

CM APPL. 20339/2024 for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

FAO(OS) 43/2024

1. The present First Appeal has been filed under Section 10 of the Delhi High Court Act, 1966 ('Act of 1966'), assailing the impugned order dated 5th December, 2023, passed in CS(OS) 1113/2007 along with connected matters [being CS(OS) 1798/2011, CS(OS) 244/2013, CS(OS) 155/2021 and CS(OS) 556/2008], whereby the learned Single Judge has designated



CS(OS) 1113/2007 titled '**Janak Datwani v. C.N.A. Exports Pvt. Ltd. & Ors.**' as the lead suit and further held that the proceedings and evidence in the said lead suit will be read in all other connected cases.

2. It is stated that vide judgment(s) dated 16th May, 2014 and 17th November, 2020 passed in FAO(OS) 592/2013 and FAO(OS) 593/2013, the aforesaid five civil suits and CS(OS) 118/2007 were consolidated and CS(OS) 118/2007 was directed to be the lead suit.

2.1. It is stated that since CS(OS) 118/2007 stood abated, the Respondent No. 2 herein i.e., Mr. Anand Datwani has filed various application(s) in the respective aforesaid civil suits, seeking to declare CS(OS) 244/2013 as the lead suit. In response, the Appellant herein raised an objection to the nomination of CS(OS) 244/2013 as the lead suit and proposed that CS(OS) 556/2008 be designated as the lead suit instead.

3. By impugned order dated 5th December, 2023, the learned Single Judge held that CS(OS) 1113/2007, which is the oldest suit, is being designated as the lead suit, and the proceedings as well as the evidence in the said lead suit will be read in all other connected cases on the basis that CS(OS) 118/2007 has already stood abated and Ms. Jamna Datwani, the plaintiff in CS(OS) 556/2008, has already expressed her intent not to content CS(OS) 556/2008.

4. Aggrieved by the said impugned order, the Appellant herein has filed the present First Appeal.

5. Learned counsel for the Appellant states that the learned Single Judge failed to appreciate that CS(OS) No. 556/2008 is the most appropriate suit for being designated as the lead suit in view of the expanse and nature of



reliefs sought therein. She contends that CS(OS) No. 556/2008 is a comprehensive suit.

6. We have heard the learned counsel for the Appellant and perused the record.

7. The suits were consolidated vide judgments dated 16th May, 2014 and 17th November, 2020 and the said judgments have attained finality. CS(OS) 118/2007 was designated as the lead suit as it was the oldest suit in the group. The learned Single Judge has applied the same yard stick and after CS(OS) 118/2007 stood abated, has identified the oldest suit i.e., CS(OS) 1113/2007 as the lead suit.

8. The Appellant herein is the plaintiff in CS(OS) 1113/2007 and is therefore, in the driver's seat as far as leading of evidence is concerned. No prejudice has been caused to the Appellant by designating CS(OS) 113/2007 as the lead suit.

9. The Appellant admits that in CS(OS) 556/2008, the plaintiff Ms. Jamna Datwani is unwilling to prosecute the said suit or lead evidence. Accordingly, we are of the considered opinion that the learned Single Judge has rightly declined to designate this suit as the lead suit; as it would create another unnecessary controversy as regards the identity of the party who would lead evidence.

10. The contention of the Appellant that CS(OS) 556/2008 is a more comprehensive suit is of no avail as this plea was not raised when judgments dated 16th May, 2014 and 17th November, 2020 were passed by the predecessor Bench. The Appellant was then satisfied with the designation of a civil suit other than CS(OS) 556/2008 as the lead suit. This is for the reason that by consolidating the suits and designating a particular suit



proceeding as the lead suit, for the purpose of leading evidence, the Court has merely streamlined the procedure and not truncated rights and contentions of the parties in the suits.

11. We are also of the considered opinion that the impugned order is not appealable under Section 10 of the Act of 1966 as it fails to satisfy the test of ‘judgment’ as laid down by the Supreme Court in *Shah Babu Lal Khimji v. Jayaben D. Kania*¹.

12. In view of the above, we find that the present First Appeal is without any merit and the same is accordingly dismissed along with the pending applications.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

APRIL 5, 2024/msh/MG

¹ (1981) 4 SCC 8 at para 115