

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

Date of decision: 1st June, 2022.

+ **CS(OS) 3379/2015 & I.A. 3153/2020 (u/S 151 CPC), I.A. 4125/2021(for directions)**

CAPITOL ART HOUSE (P) LTD

..... Plaintiff

Through: Ms. Leena Tuteja with Mr. Ishaan Chawla and Ms. Diksha Bhatia, Advocates.

versus

NEHA DATTA

..... Defendant

Through: Mr. Kuldeep Kumar along with defendant in person.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (ORAL)

1. This matter has been listed on office noting pursuant to the proceedings before the Local Commissioner on 20th May, 2022 appointed by this Court for recording of evidence.
2. The present suit has been filed seeking to, *inter alia*, injunct the defendants/occupants from unlawfully entering any part of the first floor including the balcony of Shop No.4/6 on the ground floor of the premises bearing No.4/1-14 (A-1/4), Eleven Style Mile, Ward 1, Mehrauli, New Delhi. Issues were framed in the suit on 02nd August, 2019 and a Local Commissioner was appointed to record evidence of the parties. An initial sum of Rs.1,00,000/- was fixed as the fees to be paid to the Local Commissioner, which was to be borne by the plaintiff.

3. It has been noted in the proceedings before the Local Commissioner on 20th May, 2022 that the counsel for the defendant made a request to re-examine DW-1, which request was opposed by the counsel appearing on behalf of the plaintiff.
4. Accordingly, the Local Commissioner has referred the matter to the Court for appropriate directions.
5. The relevant extracts from the proceedings of 20th May, 2022 are set out below:

“The statement of Ms. Neha Dutta, DW-1 was completed on 02.05.2022. On that date she was fully cross examined. However, during the completion of the cross examination, Sh.Kuldeep Kumar, Advocate for the defendant had made a request that he be permitted to re-examine the witness. Since, it was already 4.25 PM, therefore, the question of re-examination was kept open to be taken up today.

Sh. Kumar submits that he would like to re-examine the witness (DW-1) with regard to the questions where the witness has replied 'YES' or 'NO' only and the explanation for reaching at the truth and for the proper adjudication of the issues in question are necessary to be asked and replied for a fair conclusion.”

6. Counsel appearing on behalf of the defendant has placed reliance on Section 138 of the Evidence Act, 1872 as well as the judgment of the Supreme Court in ***Rammi Alias Rameshwar v. State of Madhya Pradesh***, 1999 (8) SCC 649.
7. Relying on the aforesaid judgment of the Supreme Court, it is contended on behalf of the counsel for the defendant that the defendant is entitled to re-examine DW-1 on account of the answers given by the said witness in the cross-examination. He states that since the witness has replied

only in 'yes' or 'no', he is entitled to re-examine the said witness to get a proper explanation from the witness in respect of the questions posed to her.

8. On the other hand, the counsel for the plaintiff vehemently opposes the said request. She places reliance on the judgment of this Court in ***Simrin Singh v. Amrit Srinivasan and Ors.***, 2018 SCC OnLine Del 7177. She submits that a witness cannot be allowed to be re-examined so as to provide an explanation when the said witness has answered the question in 'yes' or 'no'. She further submits that the witness is an educated person and a law graduate and has consciously chosen to give the answers in the aforesaid manner.

9. I have heard the counsels for the parties.

10. Before dealing with the judicial precedents cited by the counsels for the parties, it is deemed apposite to refer to the relevant portion of Section 138 of the Indian Evidence Act, which is as under:

"138...

Direction of re-examination. — The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter."

11. Counsel for the plaintiff has correctly placed reliance on the judgment in ***Simrin Singh*** (supra). The relevant observations of the Court are set out below:

"9. Though Section 138 supra permits re-examination 'to explain the matters referred to in cross-examination' and permits further cross-examination of the witness thereafter, only if the Court has in re-examination permitted new matters to be introduced (else, after re-examination, there is no right of further cross-examination) but in my opinion, the words

'explain matters referred to in cross-examination' cannot be interpreted so widely as to permit in routine, re-examination of witness and in the name of re-examination, undo what has been achieved/revealed in cross-examination. In my view, re-examination, particularly in civil cases, has to be permitted rarely. I say so because civil proceedings are essentially adversarial, as distinct from adjudication of criminality, which, with the passage of time, is more inquisitorial than adversarial, with the prosecution as well as the Judge being in search of truth, rather than letting a finding on criminality being returned for failure and defaults of the accused.

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11. *The words 'explanation of matters referred to in cross-examination' in Section 138 supra, in my view, have to be interpreted as re-examination confined to explanation of the sense and meaning of the expressions used by the witness in cross-examination, if they be in themselves doubtful and also the motive by which the witness was induced to use those expressions. Re-examination, in my view, cannot go further than that. I reiterate that re-examination cannot be sought and allowed, with the sole object of giving a chance to the witness to undo the effect of statements earlier made in cross-examination. Lacunae in evidence led cannot be filled up under the pretext of re-examination."*

12. This Court in **Simrin Singh** (supra) has observed that in the garb of 'explanation of matters referred to in cross-examination,' a witness cannot be recalled for re-examination in a routine manner. Further, such re-examination cannot be used to fill in the lacunae in the evidence.

13. The distinction between a criminal trial and a civil trial has also been noted by this Court in **Simrin Singh** (supra). In civil cases, re-examination can only be permitted rarely as civil proceedings are adversarial in nature as opposed to criminal cases, which are inquisitorial in nature.

14. The judgment in **Rammi** (supra) relied upon by the defendant is in the context of a criminal case and therefore, the observations made therein were in that context and would not be applicable in the present case.

15. In the guise of re-examination, the counsel for the defendant cannot ask the witness to give further explanation to the answers given by her. There is no ambiguity in the answers given by the witness that requires explanation through re-examination. In the present case, the witness, who is a law graduate, has consciously chosen to give her answers in 'yes' or 'no' without giving any explanation in support thereof.

16. Needless to state that any interpretation in respect of the answers given by the witness can be addressed by the counsels at the time of making submissions. Re-examination cannot be used to give a chance to the witness to undo the statement of the witness made in cross-examination and fill in the lacunae in evidence.

17. Therefore, in the facts and circumstances of the case, this Court is of the view that no case for re-examination is made out.

18. Counsel for the plaintiff submits that in view of the time and efforts put in by the Local Commissioner, the plaintiff is willing to pay a further fees of Rs.75,000/- to the Local Commissioner.

19. Accordingly, it is directed that the plaintiff shall pay an additional sum of Rs.75,000/- to the Local Commissioner.

20. With the aforesaid observations, the matter may be placed before the Local Commissioner on the dates fixed.

AMIT BANSAL, J.

JUNE 01, 2022/at