

T.S.3/11.

6.5.13. The suit is fixed for order today on the petition No.543 dtd.8.3.13 filed by the plaintiff U/O.16 R.1(3) of C.P.C with a prayer to accept the documents mentioned and enclosed with the petition and to allow the plaintiff to examine Sri P.Bhuyan, Property Secretary of the Council of Baptist Churches in North East India (in brevity CBCNEL), Guwahati and to order issue summons to the said witness with record.

Plaintiff has stated that the defendant had kept the original copies of documents/correspondences with CBCNEI, Guwahati from time to time with the plaintiff and the plaintiff had kept them in a separate cover with him. The said cover got mixed up with other professional files of the plaintiff and as such, the same could not be traced out earlier. The plaintiff also could not name out the CBCNEI, Guwahati as his witness earlier. The documents mentioned in the petition/enclosed with the petition also could not be submitted earlier. That after great search the cover container, the documents enclosed could be traced out only on 2.3.13. The said papers relate to correspondence between the defendant and CBCNEI, Guwahati and/or "The Eastern Theological College" which is part of CBCNEI, Guwahati.

The plaintiff has further stated that the correspondence which are filed with the petition and very relevant and material in the context of the plaintiff's case. The plaintiff would have to prove the same by examining witness Sri P.Bhuyan, Proper Secretary of CBCNEI Guwahati. The plaintiff would be highly prejudiced if he is not allowed to examine the said witness with records from CBCNEI, Guwahati. This witness is very material for the plaintiff.

The defendant has filed written objection to the petition wherein he has stated that the plaintiff was not authorized to keep the documents and correspondence letters in respect of the suit property with the CBCNEI, Guwahati, although the plaintiff helped the defendant in correspondence with the CBCNEI. The defendant has also failed to maintain all the original copies of the said documents. The plaintiff has collected the said correspondences/documents from the CBCNEI without the consent of the defendant. The copies of documents submitted by the plaintiff are no way related with the plaintiff in respect of the suit property and as such the petition is liable to be dismissed.

It is further submitted that as the documents are not correspondence in between the plaintiff and the CBCNEI and hence, plaintiff cannot produce the same in connection with this suit and as such, the question of examining the unlisted witness does not arise. This petition is liable to be dismissed.

I have already heard the submission of the Ld.counsels for both sides. Also perused the documents enclosed with the petition. The documents are correspondences between the defendant and CBCNEI. And correspondences are regarding purchase and execution of registered sale deed.

Order XXI of C.P.C provides for summoning and attendance of witnesses. Sub Rule 1 of Rule 1 of Order XVI imposes an obligation on every party to a suit to present a list of witnesses when it proposes to call either to give evidence or to produce documents and obtain summons to such persons for their attendance in court. Sub Rule (2) requires that parties seeking the assistance of the court for procuring the attendance of a witness must file in court on application indicating the purpose for

which the witness is proposed to be summoned. Sub Rule (3) confers a discretion on the court to permit a party to summon through court or otherwise any witness other than those whose names appear in the list submitted under Sub Rule(1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list. Rule 1 A of Order XVI enables the parties to the suit to bring any witness to give evidence or to produce documents subject to provision contained in Sub Rule (3)of Rule 1 of Order XVI.

Rule 1 and R.1 A of Order XVI reads as under-

**“1. List of witnesses and summons to witnesses-** On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.”

“3.The court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in Sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.”

**“1(A)- Production of witnesses without summons-** *Subject to the provisions of Sub rule(3) of Rule 1, any party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents.”*

The Hon’ble Supreme Court in *Mangi Ram versus Brij Mohan*, reported in AIR 1983 SC 925 had interpreted Rule 1 and Rule 1 A of Order XVI. Explaining the expression “Subject to the provision of Sub-Rule (3) of

Rule 1” appearing in Rule 1 A, the Hon’ble Supreme Court laid down that sub-rule (3) of Rule 1 of Order XVI confers a wider jurisdiction on the court to cater to a situation where the party has failed to name the witness in the list and yet the party is unable to produce him or her or his own under Rule 1 A and in such a situation, the party, perforce of necessity is to seek the assistance of the court under Sub Rule (3) to procure the presence of witness and the court may, if it is satisfied that the party has sufficient cause for the omission to mention the name of such witness in the list filed under Sub-rule 1 of Rule 1, the court may still extend its assistance for procuring the presence of such a witness by issuing a summons through the court or otherwise, which ordinarily the court would not extend for procuring attendance of a witness whose name is not shown in the list.

In *Vidhyadhar vs Manik Rao and Another* reported in (1991)3 SCC 573, the Hon’ble Supreme court discussed the law laid down in *Mangi Ram* (supra).

Relying above two Judgments of the Hon’ble Supreme Court, our own Hon’ble High court in *Gauranga Mandals and Ors vs Debadas Sarkar* reported in 2012(5) GLT 144 *held that for application of Sub-rule (3) of Rule (1), a list of witnesses must have been filed in term of Sub- rule (1) of Rule 1 and application of Sub-Rule(3) of Rule 1 cannot arise in a case where no such list of witnesses had been filed.* In the instant suit, the plaintiff had filed a list of witnesses in terms of Sub-Rule(1) of Rule 1. As such, this application under Sub-Rule(3) of Rule 1 is maintainable.

Upon hearing Sri O.M.Moheshree, Ld.Senior Counsel for the plaintiff and Sri M.Dutta, Ld.counsel for the defendant and going through the documents enclosed with the petition, I am satisfied that the plaintiff has

sufficient cause for the omission to mention the name of Sri P.Bhuyan in the list filed under Sub-Rule 1 of Rule 1 of Order XVI of C.P.C.

In view of the aforesaid, there is merit in the application , as such, the same is allowed. Issue summons to Sri P.Bhuyan. Plaintiff is to take steps for issuing summons. Fixing 4.6.13 for evidence of Sri P.Bhuyan, for the plaintiff.

Civil Judge,Jorhat.