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

% *Date of decision: 13th November, 2019*

\+ CS(COMM) 258/2018, CC.25/2011, I.As. 3333/2018, 4210/2018, 4827/2018 & 16560/2018
ATUL KUMAR SINGH

..... Plaintiff

Through: In person.

versus

NITISH KUMAR & OTHERS

..... Defendants

Through: Mr. P.D. Gupta, Sr. Adv. with
Mr. Abhinav, Ms. Bihu Sharma and
Mr. Abhishek Gupta, Advs. for D-1
Mr. Akhilesh Kumar Pandey, Advs.
for D-2 to D-4

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

I.A. 3333/2018

1. By this order I shall dispose of this application which has been filed by the plaintiff under Order XVI Rule 1 read with Section 151 CPC with the following prayers:

> *"In view of the mentioned facts and circumstances, it is humbly prayed that this Hon'ble Court may be pleased to:*

a) Summon Nitish Kumar as the witness for the next date of hearing i.e. April 12, 2018 or any other earlier date; and

b) Pass such other or further orders as this Hon'ble Court may deem fit and proper be passed."

2. It is the case of the plaintiff in the application that witness No.1 in part C of the list of witnesses submitted by the plaintiff on April 07, 2016 which was duly served on all the defendants, is Shri Nitish Kumar, present Chief Minister of Bihar. He is also defendant No.1 in the present suit. According to the plaintiff, the said witness is significant and will have a material impact in establishing the case of the plaintiff, in order to bring on record further evidence with regard to the violation to authorship rights of the literary work titled as "Special Category Status: A case for Bihar" in which the defendant No.1 is the principal actor.

3. According to the plaintiff, even though the witness namely Shri. Nitish Kumar is also defendant No.1, there is no bar under the CPC to examine the opposite party as his own witness, more particularly when the defendant No.1 is included in the list of witnesses. In this regard, he has relied upon the following judgments in support of his contention:

(i) ***Union of India (UOI) v. Orient Engg. & Commercial Co. Ltd. and Anr., 1978 1 SCC 10;***

(ii) ***Syed Yasin v. Syed Shaha Mohd. Hussain, AIR 1967 KANT 37;***

(iii) ***Sri Awadh Kishore Singh and Anr. v. Sri Brij Bihari Singh and Ors., AIR 1993 Patna;***

(iv) ***V.K. Periasamy alias Perianna Gounder v. D. Rajan AIR 2001 Mad 410;***

(v) ***Virabadran Chetty and Ors. v. Nataraja Desikar, (1904) 14 MLJ 329; and***

(vi) ***Pushpaben Champaklal Shah v. Rikhadev Tirthram Sharma & Ors., AIR 2006 Gujarat 66.***

4. Mr. P.D. Gupta, learned Senior Counsel appearing for the defendant No.1 opposes the prayer on the ground that the application preferred by the plaintiff is barred by limitation under Order XVI Rule 1 itself, inasmuch as Order XVI Rule 1(4) mandates, application for summoning of witnesses mentioned in the list of witnesses produced be obtained, within 5 days from the date of presenting of list of witnesses.

5. That apart, it is his submission that the present application is an abuse of process inasmuch as Shri. Nitish Kumar / defendant No.1 can be cross-examined by the plaintiff at his evidence stage. In fact, he states that the present application is not *bona fide* and has been filed with ulterior motives as the defendant No.1 is the Chief Minister of the State of Bihar and the plaintiff wants to gain publicity. In support of his submission, Mr. P.D. Gupta has relied upon the following judgments:

(i) ***ONGC v. Vijay Mahajan, 237 (2017) DLT 158;***

(ii) ***Amitabha Sen v. Sports World International Ltd., 148 (2008) DLT 8;***

(iii) ***Union of India v. M/s. Orient Engineering & Commercial Co., 1978 1 SCC 10;***

(iv) ***Krithi Constructions v. K. Thippa Reddy, ILR 20156 Kar 122;***

(v) ***Pirgonda Hongonda v. Wishwanath Ganesh & Ors., AIR 1956 Bom 251;***

(vi) ***Kishori Lal v. Chunni Lal, 31 AII 166;***

(vii) ***Mahunt Shatrugan Das v. Bawa Sham Das, AIR 1938 PC 59;***

(viii) ***Mallangowda v. Gavissiddangowda, AIR 1959 Mys 194 (DB);***

(ix) ***Kokkanda B. Poondacha & Ors. v. K.D. Ganapathi & Anr., AIR (2011) SC 1353; and***

(x) ***Suresh v. Uttam, 2012 Bom CR 495.***

6. Having perused the application and considered the record, before I deal with the submissions made by the learned counsel for the parties, it is necessary to state here that the I.A. 3333/2018 was initially decided by this Court vide order dated October 08, 2018 along with I.A. 4210/2018 filed under Order XVIII Rule 4 CPC, which is an application by the defendant No.1 seeking permission of the Court to examine himself by video conferencing. The said

applications were disposed of vide order dated October 08, 2018 when this Court was of the view that the defendant No.1 be examined as witness by video conferencing Rules. It is noted that the defendant No.1 filed an application being I.A. 16560/2018 on November 30, 2018 for recall of order dated October 08, 2018. The grounds raised in the application were that; (i) the defendant No.1 cannot be examined as plaintiff's witness. No cogent reasons furnished for examining defendant No.1 as plaintiff's witness; (ii) I.A.4210/2018 was moved for recording defendant's evidence through video conferencing and not to be examined as plaintiff's witness; (iii) Chamber appeal filed to ascertain whether defendant No.1 is a necessary party to the suit is still pending.

7. This Court vide order dated December 04, 2018 dismissed the I.A.16560/2018. The said order and the order dated October 08, 2018 were taken in appeal by the defendant No.1 before the Division Bench, the appeal being FAO (OS) COMM 307/2018. The said appeal was disposed of on February 14, 2019 by stating as under:

> *8. Reading of the order dated 08.10.2018 would show that the same is bereft of any reason as to why I.A.3333/2018 has been allowed. Although respondent no.1 has submitted that since there was no opposition to the prayer made in this application, it was not necessary to give reasons, we do not find any such observation made in the impugned order. On the contrary, Mr.Ranjit Kumar has drawn out attention to the reply filed*

wherein the prayer made in the application has been strongly opposed. As far as observations of the learned Single Judge contained in paragraph 14 of the order dated 04.12.2018 is concerned, in our view, the same does not amount to any admission on the part of the appellant herein. The appellant in terms of his reply has opposed the relief claimed in I.A.3333/2018. Additionally, Mr.Ranjit Kumar submits that it would be open for respondent no.1 to cross-examine defendant no.1, which would be the proper course and not to call him as his witness. Taking into consideration that the order dated 08.10.2018, which is the parent order, does not disclose any reason for allowing the prayer made in I.A.3333/2018, with the consent of the parties, we set aside the order dated 08.10.2018 and 04.12.2018 and remand the matter back to the learned Single Judge with a request to the learned Single Judge to hear I.A.3333/2018 afresh after giving an opportunity of hearing to both the parties. Prayer made in I.A.4210/2018 may be considered at the appropriate stage.

9. With these directions, the appeal and C.M.53558/2018 are disposed of.

10. List the matter before the learned Single Judge on 11.03.2019."

8. From the above, it is clear that the Division Bench has remanded back the I.A.3333/2018 for fresh consideration. Accordingly, the said application is being decided through this order. Before I come to the submissions made by the learned counsel for the parties, it is necessary to give in brief the case as set-up by the plaintiff in the Suit. It is averred in the plaint that the plaintiff is a Senior Research Scholar pursing his PhD programme in Economics at the Jawaharlal Nehru University, New Delhi. Plaintiff registered for his Ph.D in July 2006 after successfully completing his Masters in Arts and M.Phil from the JNU. The topic of the plaintiff's Ph.D thesis is *"Role of State in Economic Transformation: A case study of Contemporary Bihar"*. In relation to his thesis the plaintiff started his preliminary round of survey work involving various persons, authorities, organizations including people residing in remote rural areas. He visited many villages in Bihar in the years 2007 and 2008. During this period, the plaintiff by his efforts, skill and labour collected various data, relevant literature, and recorded / observed / analyzed problems, resources, mechanisms etc. related to the dynamics of Bihar's underdevelopment. After collection of the above work, the plaintiff arranged it in a particular manner with his opinion and observation, using his skills and acumen.

9. It is his case, that the defendant No.2 came to know about the plaintiff's said research work through the plaintiff's guide / supervisor Dr. Praveen Jha. In November – December 2006 when the plaintiff was in Bihar for his above said research work. The defendant No.2 after consulting plaintiff's guide / research

supervisor, made a request to the plaintiff that while doing his own survey, if the plaintiff could fill up certain additional forms relating to *"Bihar State Land Reform Commission's research work"*, then in return, the defendant No.2 would take care of the expenses of plaintiff's field work on actual basis.

10. That in February 2008, the defendant No.2 informed the plaintiff that a PIL is pending before the Patna High Court seeking grant of Special Category Status for the State of Bihar. The defendant No.2 being aware of plaintiff's research area, suggested to the plaintiff that his personal research could be used for supporting the cause of Bihar and requested the plaintiff to give his study / research material which would be used to support the PIL pending in the Patna High Court.

11. The plaintiff in the larger interest of people of Bihar and in order to support the said PIL in the Court, and in trust, gave "his original work" in soft copy to defendant No.2 in June 2008, with clear direction that the same will be filed only as an annexure to the counter affidavit in the said PIL. That later the plaintiff in his wisdom rearranged certain paragraphs of his work, which would have made the draft more appealing and apt. Thus, within few days, some paragraphs in "the original work of the plaintiff" were rearranged by him, on his personal Laptop. And after rearranging the paragraphs, in "the original work of the plaintiff", a soft copy was again given to defendant No.2.

12. It is the case of the plaintiff, that on May 14, 2009 when the plaintiff was at Delhi, he was rudely shocked on reading Newspaper

reports wherein it was stated that "the original work of the plaintiff" viz. *"Special Category Status: A case for Bihar"* was being published by ADRI and the Centre for Economic Policy and Public Finance as a book authored by Shri. Nitish Kumar, Chief Minister of Bihar. The said report quoted Shri Nitish Kumar's claim of authoring the book titled *"Special Category Status: A case for Bihar"*, and read that the same was to be released at a public function at Patna by Lord Meghnad Desai on May 15, 2009. The prayers made in the suit are the following:

> *"A Pass a Decree of Declaration in favour of Plaintiff and against the Defendants declaring that the Defendant Nos. 1 to 4 have jointly and severally indulged in violating the Copyright of the Plaintiff vested in his work known by the name of "Special Category Status: A case for Bihar AND*
>
> *B. Pass a decree of Permanent Injunction in favour of Plaintiff and against Defendants restraining the defendants in person and their men/agents in indulging in reprinting, reproducing, circulating in any form or manner the Copyright work of the Plaintiff known by the name of "Special Category Status: A case for Bihar AND*
>
> *C. Pass a Decree in favour of the Plaintiff and against the Defendants directing the defendants to pay the Damages and Compensation of Rs. 25,00,000/- (assessed conservatively), for indulging in violation of*

the Copyright work of the Plaintiff known by the name of "Special Category Status: A case for Bihar", AND

D. Pass a decree of Permanent Injunction in favour of Plaintiff and against Defendants restraining the defendants in indulging in humiliating, causing injury, insult and loss of reputation of the plaintiff. AND

E. Pass a decree in Favour of the Plaintiff directing the Defendants to pay the Compensation and Cost towards litigation. AND

F. pass such other order or orders which this Hon'ble Court may

deem fit and proper in the interest of justice."

13. It is a matter of record that the plaintiff has filed list of witnesses, wherein he has named the defendant No.1 as one of the witness. It is pursuant thereto that this application has been filed by the defendant No.1 which is under consideration for summoning the defendant No.1 as witness under Order XVI Rule 1 read with Section 151 CPC.

14. Before I deal with the contentions of the plaintiff and Shri P.D.Gupta, it is relevant to refer the judgments referred to and relied upon by them.

15. The plaintiff has relied upon the Apex Court judgment in the case of ***Union of India (UOI) (supra),*** wherein paragraph 3 it has been held that, "…*It is not right that everyone who is included*

in the witness list is automatically summoned; but the true rule is that, if grounds are made out for summoning a witness he will be called; not if the demand is belated, vexatious or frivolous.". It was relied upon to contend that the defendant No.1 who is included in the list of witnesses needs to be summoned by allowing the present application.

16. The plaintiff by contending that there is no bar on the right of a party to summon or examine another party including the opposite party to give evidence as his witness under the CPC, had relied upon a judgment of the Karnataka High Court in the case of ***Syed Yasin (supra),*** wherein it has been stated as under:

> *"8. A close examination of the provisions of Order XVI of the Code which deals with the summoning and attendance of witnesses, makes me come to the conclusion that there is considerable force in the contention of Sri Jagirdar that one party can apply for the examination of the other party as his witness. As already pointed out there is no such restriction in Rule 1 of Order XVI. If the intention of the Legislature was to prohibit the examination of one party by the other as his witness, it would have stated so……"*

17. He also relied upon the judgment of the Madras High Court in the case of ***V.K. Periasamy alias Perianna Gounder (supra)*** wherein para 12 the following has been stated:

> *"12. If there was a total bar on the right of a party to summon another party to give evidence as a witness, Order 16, Rule 21 will not find a place in the code. The inclusion of this provision itself shows that there may be situations where a party may be called upon by another to give evidence as the latter's witness. In fact, in Appavoo Asary v. Sornammal Fernandes A.I.R. 1933 Mad. 821, the learned Judge held as seen from the passage extracted above that when one party desires the presence of other party, the proper procedure is under Order 16. Therefore, if there are very good reasons, the court may exercise its discretion in favour of the party seeking permission. ……."*

18. The plaintiff has relied upon the judgment of the Madras High Court in the case of ***Virabadran Chetty and Ors. (supra)*** to contend that strong evidence need to be adduced by the party opposing an application for summon of witness to show that it is not made *bona fide* and that the granting of such application would be permitting an abuse of process of the Court. It is the claim of the plaintiff that no such strong evidence has been adduced / pleaded in opposing the present application.

19. The plaintiff has further relied upon ***Sri Awadh Kishore Singh and Anr. (supra)***, a Patna High Court judgment which holds as under:

> *"16. ……..A plaintiff can examine any witness he so likes -- the witness may be a stranger, may be a man of his own party or party himself or may be a defendant or his man. Therefore, if a plaintiff wants to examine a defendant as a witness on his behalf, he cannot be precluded from examining him on the ground that the said defendant has neither appeared in the suit nor upon appearance filed written statement nor prayer for filing written statement has been rejected……."*

20. Similarly, he has also relied upon ***Pushpaben Champaklal Shah (supra),*** a Gujarat High Court Judgment, to contend that both parties can examine contesting party or witness. It is pertinent to note that in this very decision it is indicated that an application for summoning such a witness should not be granted as a matter of course but at the appropriate stage the Court can pass such an order keeping the facts of the case and the conduct of the contesting party in mind.

21. On the other hand, Shri P.D. Gupta has relied upon a judgment of the Coordinate Bench of this Court in the case of ***ONGC (supra)*** to contend that in an application for summoning witness cogent reasons need to be given. The application is liable to be dismissed on the sole reason of not laying down any cogent reason; if the Court is of the view that the same results in an abuse of process. The relevant paragraphs of the judgment read as under:

> *"15. The next question that arises is can the plaintiff summon the defendant or officers of the defendant*

company to prove his own case. The Karnataka High Court in M.C. Ananda and another v. M.C. Chikkanna and another, AIR 2001 Kar 139 held as follows:-

> *"8. So, no doubt, this rule indicates that a party to the suit may be required and a party may be entitled to require any other party to the suit to give evidence, or to produce the documents and the Court below appears to have proceeded on mistaken notion that a party to the suit is not entitled subject to the power and permission of the Court to summon or to examine the opposite party. The expression 'any other party thereto' is indicative of the party to the suit or to say party other than summoning the party which may include the opposite party. In other words, the plaintiff may summon the defendant as a witness and require him, to produce the documents. Similarly, the defendant may summon the plaintiff, as held by this Court in Syed Yasin's case, supra, but it is open to the Court, if in its opinion, summoning of the other party or opponent is likely to result in the abuse of the process of the Court, it may refuse as well. It is also no doubt true that ordinarily the practice of calling the opposite party has been held and considered to be unhealthy practice, as held by their Lordships of the Privy Council in Mahant*

Shatrugan Das, case, supra and by the Division Bench of this Court in Mallangowda's case, supra. The Division Bench in paragraph 7 of the said report observed as under:

> *'We have in unmistakable terms stated in this Court previously that this practice of calling the opposite party as a witness on his side should not be countenanced as it is not in the interests of justice'."*

16. Similarly, the Madras High Court in Kaliaperumal v. Pankajavalli and Others, (1999) 1 MLJ 97 held as follows:- Paras 5, 6, 7, 8 and 9;

> *"5. I do not think that the submission made by the learned Counsel for the petitioner could be accepted. In Pirgonda v. Viswanath: MANU/MH/0163/1956 : AIR 1956 Bom 251, His Lordship followed the decision of Privy Council reported in Kishori Lal v. Chunni Lal, 31 All. 116, wherein it was held thus:*
>
> > *"Mr. Datar has also relied upon Circular No. 161 of the Circulars issued by this Court in the Civil Manual. This circular has invited the attention of the subordinate Judges to the observations of the Privy Council in Kishori Lal v. Chunni Lal I.L.R. 31 All. 116 (A), their*

> *Lordships of the Privy Council have referred to the practice which sometimes seemed to obtain in some of the Courts in India of calling the party's opponent as a witness and they have observed that this practice is highly objectionable. 'Such a practice', said their Lordships, ought never to be permitted in the result to embarrass judicial investigation as it is sometimes allowed to be done."*

6. In Mallangowda v. Gavisiddangowda, AIR 1959 Kant 194, it is held thus:

> *"Practice of calling the opposite party as a witness should not be countenanced as it is not in the interests of justice."*

7. In Narayana Pillai v. Kalyani Ammal 1963 K.L.T. 537, it is held that the practice of party causing his opponent to be summoned as witness was disapproved in rather strong terms by the Lordships of Privy Council and that as a matter of right, the party cannot have the opposite party as witness.

8. The above decision was follows by Kerala High Court in a case between Muhammed Kunji v. Shahabudeen 1969 K.L.T. 170, wherein it is held thus:

> *"The practice of a party causing his opponent to be summoned as a witness has to be disapproved. As a matter of right a party cannot have the opposite party examined as a witness."*

9. In view of the settled legal position, I do not think that the petitioner can compel the second defendant to be examined as a witness for him."

17. I may notice the issues which have been framed in the present case, The issues read as follows:-

> *"i) Whether the plaintiff is entitled to the damages and claims as prayed for in the suit? OPP*
>
> *ii) Whether the plaintiff sustained loss of reputation, business opportunity and financial loss on account of the ban order dated 14.11.2006 passed by defendant? OPP*
>
> *iii) Whether the ban order dated 14.11.2006 was passed legally and for any valid reason by the defendant? OPD"*

18. Factually what follows is the respondent have failed to give any cogent reasons as to why these senior officers of the petitioner are being summoned, other than stating that they are necessary to prove the case of the respondent. That apart, normally the Courts as noted above have frowned upon a party summoning the

opposite party or its officers for the purpose of recording of evidence. It is clear in the present case that the only object appears to be to harass or embarrass the officers of the petitioner."

22. He further relied upon ***Amitabha Sen (supra)*** another judgment by a Coordinate Bench of this Court wherein it was held as under:

"13. After having considered the arguments advanced by the counsel for the parties and having examined the decisions cited by them, it is abundantly clear that while there is no bar to a party seeking the summoning of another party in the same suit as his witness, it is also clear that such an act is unusual and that it should only be permitted if the application for summoning the opposite party is bona fide and is not vexatious or an abuse of the process of the Court. Apart from this, there is the standard question which the Court has to consider in the case of summoning any witness as to whether it is necessary to summon the witness for which the application has been moved. Order 16 Rule 1 (2) CPC clearly stipulates that the party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned. This in itself indicates

that it is not as if the Court has to allow every application for summoning of a witness. The party seeking the summoning of a person as a witness has to specifically indicate the purpose for which he or she is proposed to be summoned. It is obvious that the Court has to apply its mind and exercise discretion in a judicial manner."

23. He relied upon a judgment of the Supreme Court in the case of ***Union of India (UOI) (supra)*** to contend that an application filed for summoning witness on vexatious or frivolous grounds should not be entertained by this Court.

24. Similarly, he referred to another Supreme Court judgment, ***Kokkanda B. Poondacha & Ors. (supra),*** wherein it was held that oblique motives of parties should be looked into by the Court while deciding application for summoning of witnesses under Order XVI Rule 1.

25. That apart, he has relied upon ***Krithi Constructions (supra)*** a Karnataka High Court judgment to contend that summoning or examining of an opposite party to a suit as a witness must be allowed by the Court only in rarest of rare cases, where it is unavoidable in the interest of justice. The relevant portion of the judgment reads as under:

"8. Though it is true that the party to the suit can examine another party to the suit as witness, such procedure has to be permitted in rarest of rare cases.

This practice of calling the opposite parry as witness on his own side, cannot be allowed, if, the same is not in the interest of justice. The discretionary power to summon the opposite party as a witness has to be exercised judiciously. If calling the opposite party to give evidence is not in the interest of justice, it is not open for the Court to permit to summon his opponent as a witness in his own case. …"

26. Further, he has relied upon two Privy Council judgments, ***Kishori Lal (supra)*** and ***Mahunt Shatrugan Das (supra)***, which condemns the practice of calling opposite party as witness. Reliance is also placed on the Division Bench judgment of Karnataka High Court in ***Mallangowda (supra)*** to cement his contention that the practice of calling opposite party as a witness should not be countenanced as it is not in the interest of justice.

27. On similar lines he refers to ***Pirgonda Hongonda (supra),*** a Bombay High Court, wherein the Court relying upon ***Kishori Lal (supra)*** held that the practice of calling the opponent as a witness should be never permitted and made the rule absolute.

28. Insofar as the judgment relied upon by Mr. P.D. Gupta in ***Suresh (supra)*** (Bombay High Court) is concerned, the court held that an application under Order XVI Rule 1 CPC seeking to call upon the opposite party needs to be set aside. The said judgment

draws inference from ***Kishori Lal (supra), Mahunt Shatrugan Das (supra)*** and ***Pirgonda Hongonda (supra).***

29. Apart from the aforesaid judgments as relied upon by the parties, I find that a Coordinate Bench of this court in its recent opinion reported as ***MANU/DE/2790/2016 Symantec Software Solutions Pvt. Ltd. and Ors. v. R. Modi and Ors.*** had by referring to the Judgment in ***Amitabha Sen (supra)*** held that party to a litigation is not entitled to summon or examine a witness without satisfying the court of the relevance of the witness's testimony to the lis for adjudication, in other words, the purpose for which the witness is proposed to be summoned.

30. On a reading of the above judgments relied upon by the parties, some of the factors need to be considered while considering an application of this nature, are as under:

1. Order XVI of the code, which deals with the summoning of the witness does not bar one party from applying for the examination of the other as his witness.

2. It is not that everyone who is included in the list of witnesses is automatically summoned.

3. The Rule is if the grounds are made out for summoning of witness, he will be called not if the demand is belated, vexatious or frivolous.

4. An application for summoning of the witness should not be granted as a matter of course, but at the appropriate stage, the court can pass such order keeping the facts of the case and conduct of the contesting party in mind.

5. In an application for summoning of witness cogent reasons needs to be mentioned. In the absence of any cogent reason, the application liable to be dismissed.

6. Motives of the party should be looked into by the court while deciding the application for summoning of witness Under Order XVI Rule 1 CPC.

7. Strong evidence needs to be adduced by the party opposing an application for summoning of witness to show that it is not a bona fide and the granting of such application shall be permitting an abuse of the process of the court.

8. The summoning or examination of an opposite party of a suit must be allowed by the court only in the rarest of rare cases when it is unavoidable in the interest of justice.

31. In the facts of this case, the reasoning given by the plaintiff in the application under Order XVI Rule read with Section 151 CPC are primarily two, which have been averred in Paras 4 and 7 of the same, which I reproduce as under:

4. That the said witness has to be examined in order to bring on record further evidence with regard to the violation to authorship and authorship rights of the literary work titled as "Special Category Status: A case for Bihar", in which defendant no. 1 is the principal actor.

xxx xxx xxx

7. Thus, in view of the above, it is submitted that the present application be allowed as the same is bonafide and is in the interest of justice and no prejudice will be caused to the

defendant if the same is allowed. However, irreparable loss and injury will be caused to the plaintiff if the same is not allowed.

32. The dispute in the suit is whether the defendants have violated the copyright in the original work of the plaintiff. The witness namely Shri. Nitish Kumar is defendant no.1 in the case. The issues have been framed in the suit on February 3, 2016 which are following:

i. *Whether the plaintiff is the owner of the copy right in the work "Special Category Status: A Case for Bihar" and if so, whether the defendants are infringing the copy right of the plaintiff? OPP*

ii. *Whether the plaintiff is entitled to damages, if so, of what amount? OPP*

iii. *Whether the work "Special Category Status: A Case for Bihar is a Government publication of the defendant no. 4and accordingly whether the defendant no. 4 is entitled to relief filed in its counter claim against the plaintiff? OPD*

iv. *Relief*

33. From the above, it is clear that on issue no.1, the onus is on the plaintiff to prove that he is the owner of the copyright. It shall be his endeavour, to prove the same. On the other hand, vide their written statements the defendants are contesting the said position. In other words, the stand of the parties is at variance. Each of the parties, shall have to enter the witness box to prove his / its case. The opposite party, shall naturally cross-examine the party in the witness box. So it follows, that the defendant no.1 coming as a witness, shall in his evidence make good the stand taken by him in his written statement. He shall not prove the case of the plaintiff.

So, the reasoning of the plaintiff calling defendant no.1, as a plaintiff's witness being so called "principal actor" and a *bona fide* act is not convincing. In other words, the reasons are not cogent. The facts of this case shows, that it is not necessary to summon the defendant no.1 as witness of the plaintiff. Surely when the defendant no.1 appears in the witness box to prove his case, the plaintiff shall be within his right to demolish the case set up by the defendant no.1 in his pleading, and ensure, the case set up by him is proved by cross-examining the said defendant.

34. Further respondent no.1 being the Chief Minister of State of Bihar, it appears to me that the present application has been made only to put pressure on him as he is being summoned, not in normal course, but as plaintiff witness without cogent reason as such not *bona fide* nor in the interest of justice. In this regard, I only reproduce few lines of Para 15 of the Judgment of the Coordinate Bench of this Court in ***Amitabha Sen (Supra)*** wherein, this court has held as under:

> *15. Coming now to the question of summoning Mr Mike Ashley, I am in agreement with the submissions made by the learned counsel for the defendants that Mr Mike Ashley, being the sole shareholder of the defendant No.1 is being summoned perhaps with the object of putting some pressure on him and allowing the application would not be in the interest of justice. Apart from this, I find that there is nothing which has been produced by the plaintiff to indicate that he had any direct dealings with Mr Mike Ashley at any time during the currency of his engagement on behalf of the defendant No.1 through defendant No. 6. All the dealings of defendant No.1 with the plaintiff have been through defendant No.6 and the other associated defendants, being defendants 2 to 5. It is clear that*

summoning by an opposite party witness or an opposite party is an unusual step and should be allowed only where exceptional circumstances are shown. No such circumstances exist in this case."

35. In view of my above discussion, I do not see any merit in the present application. The same is dismissed.

36. List the matter before Joint Registrar for further proceedings on January 06, 2020.

V. KAMESWAR RAO, J

NOVEMBER 13, 2019*/aky/jg*