THE COURT OF APPEAL

Neutral Citation Number: [2018] IECA 230

Record No. 2016/579

Peart J.
Irvine J.
Hogan J.

BETWEEN/

GAVIN TOBIN

PLAINTIFF/

RESPONDENT

- AND -

THE MINISTER FOR DEFENCE, IRELAND

AND THE ATTORNEY GENERAL

DEFENDANTS/

APPELLANTS

JUDGMENT of Mr. Justice Gerard Hogan delivered on the 9th day of July 2018

1. Judicial concerns regarding the breadth of discovery orders have been expressed with increasing frequency and – perhaps it would even more correct to say – stridency in the last two decades or so. As I observed in *IBM Internet Services Ltd. v. Motorola Ltd. [2015] IECA 282*:

> "experience has regularly shown that the practical benefits of such discovery is often entirely outweighed by the costs and delays in the entire process. How often is it the case that even in complex litigation only a relatively small number of documents prove to be the important ones, despite the generation of thousands of documents in the course of the discovery process, most of which are never used or deployed in court?"

2. Similar concerns had also been expressed by Kelly J. in *Astrazeneca AB v. Pinewood Laboratories Ltd.* [2011] IEHC 159 where he stated that the principles of proportionality governing discovery requests required an assessment of "the extent or volume of the documents to be discovered and the degree to which the documents are likely to advance the case of an applicant or damage the case of his opponent." Kelly J. added that the public interest in the proper administration of justice "is not confined to the relentless search for the perfect truth."

3. Similar concerns had also been voiced by Fennelly J. in *Ryanair Plc v. Aer Rianta Cpt* [2003] 4 I.R. 264, 277 where he said:

> "The change made to O. 31, r. 12, in 1999, exemplifies, however, growing concern about the dangers of unnecessarily costly and protracted litigation and, in particular, the burdens on parties and the courts arising from excessive resort to automatic blanket discovery. The public interest in the proper administration of justice is not confined to the relentless search for perfect truth. The just and proper conduct of litigation also encompasses the objectives of expedition and economy."

4. This and other contemporary case-law demonstrates that it is thus necessary for this Court to ensure that the discovery does not potentially overwhelm the action or impose unreasonable burdens on the parties.

5. In its own way the present appeal provides almost a paradigm example of these difficulties. The plaintiff in the present proceedings seeks damages against the Minister for Defence in respect of personal injuries which he claims to have suffered through allegedly being exposed to toxic chemicals whilst employed as an aircraft mechanic while serving with the Aer Corps at Casement Aerodrome between January 1989 and September 1999.

6. The present appeal concerns an order of the High Court (McDermott J.) dated the 14th October 2016 which in turn followed a reserved judgment delivered on the 7th October 2016. The effect of this order was that the Minister was ordered to make discovery to the plaintiff of thirteen categories of documents dating back as far as 1990: *Tobin v. Minister for Defence* [2016] IEHC 547. Of these categories, far and away the most burdensome is the request contained in category 2 and I will consider this particular category presently.

The background to the present proceedings

7. The present proceedings commenced by way a personal injuries summons dated the 21st January 2014. According to his pleadings, Mr. Tobin worked as an aircraft mechanic serving with the Aer Corps at Casement Aerodrome, Baldonnel. He pleads that he finished the Aer Corp Apprentice School Training in July 1991 and was then assigned to the Engine Repair Flight Workshop ("the ERF"), a workshop area at Casement Aerodrome, for 10 weeks before being assigned to various other locations for a period of 30 weeks. He then returned to the ERF, where he was employed until February 1994 when he was transferred to another section.

8. Mr. Tobin's case against the Minister may be broken down into two separate, but related, categories of alleged wrongdoing, namely (a) that in the course of his employment as an aircraft mechanic at Baldonnel, he was exposed, through the handling of equipment and inhalation, to toxic chemical fumes; and (b) that he was on occasion subjected to what appears to have been a sort of initiation

rite by means of a practice known as "tubbing". This involved his entire body being doused with chemicals by other Aer Corps personnel while he was tied to a stretcher.

9. Insofar as (a) is concerned, the only area within Baldonnel which has been identified as a location at which Mr. Tobin was actually exposed to toxic chemical fumes is the ERF, albeit that McDermott J. held that this does not mean that other parts of the aerodrome were not also relevant. Insofar as (b), the alleged "tubbing", is concerned Mr. Tobin identified only one alleged incident which is said to have occurred at the Light Strike Squadron. It is against this background that Mr. Tobin has claimed that the Minister was guilty of negligence etc. in the manner in which he was provided with a system of work in that he was required to work in a hazardous environment; that he not provided with appropriate training or equipment; that the Minister failed to identify that the chemicals with which he was working were hazardous and that he was provided with ineffective gloves and poor ventilation.

10. Mr. Tobin sought fifteen categories of discovery from the Minister. He responded by offering to make discovery of nine categories, six of which were in precisely the same wording as was sought by the plaintiff. The Minister objected to discovery in these terms because of its burdensome terms. Specifically, the documentation sought related mainly to purchase orders and similar documentation in relation to the purchase of aircraft solvents and other documentation. The uncontested evidence in the High Court was that it would take 10 members of staff – all of whom would have to be diverted from their existing duties - some 220 man hours to review, locate and categorise the documents of which the plaintiff had sought discovery. Many of these records are held only in manual form and are stored in a variety of locations. Given their provenance and age it is simply inevitable that the burden involved in seeking out and cataloguing documents of this kind dating back some 28 years is likely to be very considerable.

The judgment of the High Court

11. In his judgment McDermott J. made orders providing for what amounts to extensive discovery in favour of the plaintiff. In his judgment he disagreed with the Minister's analysis of the case and which was based on an analysis of the plaintiff's pleadings that the only location at which he claimed he was exposed to toxic fumes was the ERF. McDermott J. also ruled that the nature of the claim "necessarily requires that this burden of discovery be imposed upon the defendants."

Modern discovery practice

12. In its own way, this appeal serves to illustrate the crisis – and there really is no other word for it – now facing the courts regarding the extent of burdens, costs and delays imposed on litigants and the wider legal system by the discovery process as it presently operates. I should say immediately that this is not intended in any sense as a criticism of the plaintiff or his legal advisers. They have quite properly sought to follow and apply the existing discovery rules and practice for the benefit of their client. It is rather the existing discovery rules and practice which have become the problem in terms of the burdensome nature of discovery, the significant costs of which are imposed on litigants and, not least, the delays which are entailed in the entire discovery process.

13. The existing rules and practice trace their lineage to the famous words of Brett L.J. in *Compagnie Financiere et Commerciale du Pacifique v Peruvian Guano Co.* (1882) 11 Q.B.D. 55, 63 where he said:

> "It seems to me that every document which relates to the matters in question in the action, which not only would be evidence upon any issue, but also which, it is reasonable to suppose, contains information which may – not which must – either directly or indirectly enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary. I have put in the words 'either directly or indirectly' because, as it seems to me, a document can properly be said to contain information which may enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary if it is a document which may fairly lead him to a train of enquiry which may have either of those two consequences."

14. Seen in their own context, these words were unexceptional and, for many generations, this test proved unproblematic. Up to about a generation ago the burdens imposed by the discovery rules were relatively light, precisely because the number of documents captured by the Peruvian Guano relevance and necessity rules were, by modern standards, relatively small and manageable.

15. Discovery practice was, however, transformed by modern technological changes. Accordingly, the advent of the photocopier from the late 1950s, email in the 1980s and the world wide web in the 1990s have all wrought their own impact on the discovery process. One way or another, the burdens now imposed by the process contribute significantly to legal costs and to delays within the legal system to the point where a process designed to assist the fair administration of justice now at times threatens to overwhelm it by imposing disproportionately onerous demands upon litigants.

16. There have, admittedly, been judicial efforts to bring about change in our discovery practice. General discovery orders have been prohibited since 1999 and the Supreme Court has repeatedly stressed the necessity for proportionality (*CRH v. Framus* [2004] IESC 25, [2004] 2 I.R. 20) and the fact that the criterion of necessity is just as important as that of relevance (*P.J. Carroll & Co. Ltd. v. Minister for Health and Children* [2005] IESC 26, [2005] 1 I.R. 294). These efforts have not, however, been fully successful and the burdens which the contemporary discovery process imposes on the litigants remain almost as acute as ever.

17. This is certainly true of the present case. The plaintiff does not, for example, allege that he suffered catastrophic or even severe personal injuries. He does not even say that he has been rendered unfit for work, but rather that the symptoms of which he complains – acute anxiety, depression, a general feeling of unwellness and random incidents of severe pain – affect his capacity for work. Even taking his case at its height, the plaintiff's case can fairly be regarded as a routine personal injuries case (albeit with some unusual features) which, at best from the plaintiff's perspective, is one of moderate severity. Yet the Minister is faced with making discovery which will take 220 man hours to accomplish and which will require his personnel to seek out documents held in storage in a variety of different locations for well nigh thirty years. I should add that, contrary to the submission advanced in this appeal, this Court cannot treat State defendants any differently from other defendants. I accept, of course, that State defendants are probably in a better position than many other defendants to secure the resources necessary to attend to this particular discovery request, but this cannot in any sense take from the nature of the demands with which compliance with this request would impose. These are burdens which fall to be discharged by the taxpayers and just because this is a very large and diffuse body, their interests in ensuring an efficient system of litigation cannot nevertheless be overlooked.

18. These facts alone ought to be enough to demonstrate that something is seriously amiss with the discovery system as it currently operates. In these circumstances it behoves the Court to seek out and to contemplate alternative solutions. In *Dunnes Stores v. McCann* [2018] IEHC 123 Barniville J. said that the court should be "scrupulous" to ensure that discovery is really needed and "to refuse such discovery where interrogatories would be more appropriate or where an alternative means of proof is available to the applicant for discovery."

19. The requirement that the information now sought by way of discovery is not otherwise available, such as by way of

interrogatories, is fundamental and is not in itself novel. As Kelly J. said in *Anglo Irish Bank Corporation Limited v. Browne* [2011] IEHC 140.

> "Discovery ought not to be ordered where the information sought to be gleaned by it is capable of being obtained by an alternative less expensive and less time consuming method. In this regard, I have in mind the use of interrogatories. In the Commercial List, interrogatories may be delivered as of right. No recourse to the court is necessary and they are capable of being administered in every case.
>
> Interrogatories are in many instances superior to discovery. That is so for a trinity of reasons. First, they ask a direct question. Thus the questioner instead of having to sort through what may be hundreds or thousands of documents in an effort to find out whether a particular state of affairs existed or not, simply asks the relevant question. Second, the interrogatories must be answered. Moreover, they are answered under oath. Third, the interrogatories, once answered, may be utilised as evidence in the trial thereby avoiding the necessity to call one or more witnesses.
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> Interrogatories need no longer be framed in an archaic form by posing questions in the negative. They can ask direct questions. I have seen many cases in this division of the court where a large reduction in discovery and considerable shortening of trial time was achieved by the answering of, by times, in excess of a hundred interrogatories."

20. These comments were, admittedly, made in the context of a case which had been admitted to the Commercial List and was thus governed by the provisions of Ord. 63A and, specifically, the provisions of Ord. 63A, rr. 9-13 which in two respects simplified the procedure in relation to the asking of interrogatories, first, by dispensing with the necessity to seek leave of court and, second, by permitting the questions to be posed in the modern form without the elaborate and archaic form specified in Appendix C ("Was not….", "Did not…." etc.). This Court has nonetheless made it clear that even in non-commercial cases the "archaic style of framing questions in the negative has long since been abandoned": see *McCabe v. Irish Life Assurance plc* [2015] IECA 239, [2015] 1 I.R. 346, 358 per Kelly J.

21. It is with these principles in mind that the present appeal against the breadth of the order made by the High Court can be considered. Before considering the specific categories of discovery which are the subject of this appeal, it is nonetheless necessary to consider one broader issue of principle, namely, whether on the basis of the pleaded case, it was appropriate to limit the discovery sought to documents concerning the ERF?

Whether, on the basis of the pleaded case, it is appropriate to limit the discovery sought to documents concerning the ERF?
22. It is well established that the ambit of discovery is defined by reference to the pleadings and the particulars: see, *e.g.*, *Hannon v. Commissioners of Public Works* [2001] IEHC 59.

23. In the High Court the Minister argued that in respect of several of the disputed categories, discovery should be limited only to those documents which concern the ERF. For example, whereas at category 1, the plaintiff sought discovery of *inter alia* "the Safety Data Registrar maintained by the Minister in respect of Casement Aerodrome …", the offer which the State parties made was limited to documents "regarding the chemicals utilised at the ERF Workshop…".

24. Central to this argument was that the plaintiff's case in relation to the claim based on an exposure to the toxic chemical fumes was itself necessarily confined to that to which he said he had been exposed at the ERF workshop. Contrary to the view taken by McDermott J., following a review of the pleadings and the particulars, I find myself compelled to conclude that this aspect of the plaintiff's case is necessarily either expressly or impliedly confined in this fashion.

25. Thus, the plaintiff referred at paragraph 9 of the personal injury summons to the alleged exposure to toxic chemical fumes, but this was accompanied by the words "Following his posting to the 'engine-shop'…". At paragraphs 9(a) and (b) of his replies to particulars, where the plaintiff had been asked for further particulars of his plea that he "was exposed to various dangerous chemicals and organic solvents on an on-going basis", the reply referred only to the ERF. The plaintiff stated that "the first exposure to solvents and dangerous chemicals was in ERF in July 1991" and that "the last exposure to chemicals as part of his day to day employment – February, 1994. The plaintiff, however, continued to call to the ERF on a regular basis for tea and lunch breaks over the following two/ three years." Finally, at paragraph 10 of his replies to particulars, where the plaintiff had been asked to provide further particulars of the general allegation that "the defendants failed to provide safe, proper and appropriate equipment…", he referred only to the ERF in his answer. He added: "There was one communal apron, one communal pair of gloves and one communal set of goggles available for use by all persons in ERF."

26. It thus seems to follow that the plaintiff's pleaded case is based on exposure to these chemical fumes etc. at the ERF and at the ERF alone. It is true that in his replying affidavit the plaintiff stated that there were thirteen additional locations within Casement Aerodrome which "were regularly frequented by Aer Corps personnel". I repeat, however, that the only *pleaded* case which the plaintiff has made concerning specific incidents of direct personal exposure to toxic chemical fumes concern occurrences at the ERF. As McCracken J. pointed out in *Hannon v Commissioners of Public Works* [2001] IEHC 59, it is the pleaded case alone which remains dispositive of this issue:

> "Relevance must be determined in relation to the pleadings in this specific case. *Relevance is not to be determined by reason of submissions as to alleged facts put forwards in affidavits …*" (emphasis supplied)

27. I now propose to consider in turn the specific categories of documents which are presently in dispute so far as this appeal is concerned, namely, categories 1, 2, 5, 6, 10, 11, 12 and 14.

Category 1: "The Safety Data Registrar maintained by the Defendants in respect of Casement Aerodrome from the period between 1st January 1990 and 1st September 1999
28. On behalf of the Minister Captain Nic Cába averred that the phrase "safety data registrar" was not known to the State defendants and that an order in such terms would lead to no such documents being discovered. The Minister submits that this Court should amend this category to cover "Material Safety Data Sheets", which is a category of documents of which they can make discovery.

29. For my part, I agree that it would be appropriate to order discovery in these terms. In view, moreover, of what I have already stated in respect of the scope of the plaintiff's pleaded case, I think that it would be appropriate that this discovery should be confined to "chemicals utilised at the ERF…".

Category 2: All documentation, notes, records, reports, etc. listing or identifying any chemicals which were utilised by the

plaintiff in the course of his duties during the said period together with any documentation identifying the quantities and dates of purchase of such materials.
30. It is fair to say that this was the most important category of documents sought and it was also the most contentious. For the reasons already stated, the burden which the High Court discovery order would place on the defendants to identify and seek out routine orders for solvents and chemicals purchased as far as 1990 would obviously be very onerous and in all likelihood out of all proportion to the likely benefits which might otherwise accrue to the plaintiff.

31. In these circumstances the Court should not now make an order for discovery unless all other available options have been properly explored. It should be recalled that the plaintiff already knows – or, at least, seems to know – the chemicals and solvents which were used by him, since a list of these chemicals is listed by him at reply no. 9(b) and 9(d) in his reply to particulars. This would seem to be an obvious instance of where the plaintiff might be permitted to serve interrogatories on the Minister requesting him to state whether these particular chemicals were in fact used during the course of the plaintiff's employment at the ERF and, if so, to estimate the amount of the quantities that were so utilised in the ERF during the relevant period of the plaintiff's employment there.

32. There is, admittedly, no motion for interrogatories currently before this Court and, of course, the plaintiff would have to issue such a motion in the High Court before an order along these lines could properly be made. Yet the burdens which this category of discovery would otherwise impose are so considerable that, adopting the approach suggested by Barniville J. in *McCann*, it is first necessary that other options should first be explored. I would accordingly allow the appeal so far category 2 is concerned on the ground that the present application for discovery is premature. The plaintiff should now make an application to the High Court in the first instance seeking leave to serve interrogatories along the lines I have just indicated. Should it transpire that the information obtained by way of interrogatories was insufficient – and bearing in mind that it will (or, at least, should be) in the Minister's interests to facilitate the plaintiff in this regard – the plaintiff will then be at liberty to renew his discovery application before the High Court

Categories 5 and 6: Training Records
33. Categories 5 and 6 were originally separate categories of documents when discovery was first sought by the Respondent. Category 5 concerned documents "pertaining to general safety training and special safety training in chemicals" and category 6 concerned documents "… pertaining to the provision of information with regard to the dangerous properties of the chemicals utilised by the plaintiff in the course of his employment":

34. Insofar as category 5 was concerned, the Minister agreed to make discovery of documents "relating to special safety training in chemicals" but he objected to making discovery of documents pertaining to "general safety training."

35. Insofar as category 6 was concerned, the Minister objected in principle because: (a.) the category is not specific in the sense that it does not identify to whom it is said the information in question would have been provided, and (b.) it follows from the allegations made in the plaintiff's personal injury summons that he is concerned only with information which was provided to him. It was accordingly submitted that any documents which fall within this category would automatically fall within category 5. The Minister argued before the High Court that there was no necessity to place the additional burden on them by requiring them to make discovery in the terms sought in respect of both category 5 and category 6.

36. In the High Court McDermott J. upheld the Minister's objections regarding category 5 but he also amalgamated the revised category with category 6 in order to form a single composite category. The Minister submitted that this was the incorrect approach as by requiring him to make discovery of two categories of documents, albeit now as a joint composite category, the court had disproportionately increased the administrative burden associated with the discovery in respect of these two categories.

37. On this point I find myself in agreement with the Minister, save that I would go further. The plaintiff is, of course, entitled to ascertain the extent of the training with which he had been provided in relation to these toxic chemicals. But the training documents now sought by the plaintiff are not necessarily in themselves intrinsic to this exercise: all that the plaintiff needs to know for the purposes of the claim he is now advancing is whether he received training and, if so, what was the nature of that training and, specifically, whether it extended to toxic chemicals of the kind alleged.

38. Once again, it seems to be appropriate that this information can be ascertained by seeking to leave to serve interrogatories without the need – at least in the first instance – for discovery of these categories. I would make a similar order here to that already indicated in respect of category 2.

Category 10: Any accident, incident or injury records pertaining to chemical exposure for the relevant period to include reports of any such accidents or injuries to the Heath & Safety Authority
39. The appellants objected to being required to make discovery of this category of documents, which concerned, notifications of accidents and other spillages to the Health & Safety Authority as there was no plea contained in the personal injury summons which concerned previous complaints regarding accidents or incidents etc.

40. In the High Court McDermott J. amended this category so that the discovery order now refers to "any accident, incident or injury records pertaining to chemical exposure for the relevant period in relation to the alleged 'tubbing' incidents…". Before this Court the Minister maintain his objection, arguing that there was no basis for ordering discovery of documents concerning records of any previous 'tubbing' incidents. It was pointed out that the Minister has only given particulars of a single such alleged incident in his replies to particulars (paragraph 17(g)) and it was said that he is presumably in a position to give evidence as to the occurrence of that incident without the need to obtain discovery.

For my part, I think that Mr. Tobin is entitled in principle to details of any previous "tubbing" incidents. If there were other such incidents and the Minister either knew or turned a blind eye to this practice – if practice it was – it would certainly tend to corroborate the plaintiff's account and undermine the Minister's defence of this part of the action. I also think, however, that in this context discovery should be the last – and not the first – resort. I would again allow the appeal in respect of this category of documents by making the same order as already made in respect of category 2.

Category 11: All records, reports, incident reports, etc., pertaining to spillages of chemicals to include any documentation relating to the procedure to be adopted on spillages at the reason therefore.
41. The Minister objected to making discovery of this category because there is no allegation on the pleadings that there were inadequate procedures in place for dealing with spillages of chemicals or that the plaintiff was required to deal with spillages. In the High Court McDermott J. amended this category of documents to refer to "records, reports … pertaining to spillages arising out of the alleged 'tubbing' incidents…"

42. For my part, I think that the approach which I have just suggested in relation to category 10 should also apply here. It follows

that I would again make a similar order to that which I already made in respect of category 2.

Category 12: Environmental impact records, EPA Inspection records etc.
43. The Minister was prepared to consent to an order for discovery in terms of this category but limited to documents concerning: (a.) chemical safety; (b.) the ERF; and (c.) the period between the 1st January 1990 and the 1st September 1999. The Minister submitted that these proposed limitations were all consistent with the allegations contained in the pleadings.

44. In the High Court McDermott J. stated:

> "The defendants are satisfied to furnish discovery of all such documents "relating to chemical safety at the ERF Work Shop at Casement Aerodrome generated in the period 1st January [1990] to 1st September 1999". I am not satisfied that the location restriction proposed is appropriate and I am satisfied that the order for discovery should apply to those locations within the Aerodrome set out in the plaintiff's affidavit at para. 8 with the exception of the carpentry shop."

45. In the light of the conclusions reached earlier regarding the scope of the pleadings, I find myself reaching a slightly different conclusion to that of the trial judge. For my part, I think that the discovery sought should be confined to both issues of chemical safety and the ERF in the manner which the Minister urged. I would accordingly, to that extent, vary the order made by the High Court.

Category 14: All standard operating procedures for use by personnel relating to the activities which they are required to carry out in the course of their duties during the relevant period.
46. The Minister objected to this category as it was said to be a generic category which was not specific to any of the matters at issue in the case or to any issue concerning chemicals or chemical safety. In the High Court McDermott J. amended the category in order to require discovery of "all records and documents relating to the plaintiff's undertaking in tasks related to the emptying, cleaning and restocking of chemicals, vats or baths."

47. Before this Court counsel for the Minister maintained this objection saying that "All records and documents relating to …" was a vague, generic phrase and which could encompass any number of documents which are not directly relevant to Mr. Tobin's claim but which nonetheless fall within the ambit of even this amended category.

48. While I acknowledge that the plaintiff is entitled in principle to ascertain this information regarding the tasks which he had been assigned during the course of his employment, it is surely not necessary for potentially wide-ranging discovery to be ordered for this purpose. I would again in respect of this category of documents make a similar order to that which I have already made in respect of category 2.

Conclusions
49. To sum up, therefore, this case is another example of where present day discovery practice and procedure has gone seriously amiss. I would again stress that this is not in any sense a criticism of the plaintiff or his legal advisers, since their requests for discovery in the present case simply reflect contemporary practice in discovery matters. Nor is this in any sense a criticism of the careful and thorough judgment of McDermott J. since he was simply following present practice.

50. Yet the extent of the contemporary burden of discovery is itself illustrated by the present case, where in what is little more than a routine personal injuries case of moderate difficulty, the Minister was ordered to make discovery of documents in relation to sales purchases and other documents going back to 1990. Such is the extent of the crisis facing our legal system by reason of the burdens imposed by discovery requests, that it now behoves the judiciary to re-calibrate and adjust that practice by insisting that in cases where the discovery sought is likely to be extensive, no such order should be made unless all other avenues are exhausted and these have been shown to be inadequate.

51. In the light of that I would first vary the orders made by the High Court in the manner indicated in this judgment. But more fundamentally, I would allow the present appeal so far as categories 2, 5, 6, 10, 11 and 14 are concerned on the ground that the application for discovery in respect of these categories of documents as premature. The plaintiff should rather in the first instance seek the information sought by means of interrogatories or, as the case might be, a notice to admit facts. A co-operative approach by both parties in respect of these requests might well have the effect of not only reducing considerably the factual issues in dispute, but also obviate the need for any wide-ranging or extensive discovery. In the event that such an application for interrogatories did not yield what is really necessary or essential to the prosecution of the plaintiff's case that the present application for discovery might be renewed afresh to the High Court.