

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

+ **CM(M) No.231/2009 & CM No.3959/09**

Reserved on: April 02, 2009

% Date of Decision: April 08, 2009

HALDIRAM (INDIA) PVT. LTD. & ORS. Petitioners
Through: Mr. Sandeep Sethi,
Senior Advocate with
Mr. Mahender Rana, Mr.
Mohit Bakshi,
Mr. Sindhu Sinha &
Nikhil Bhalla, Advocates

Versus

M/S. HALDIRAM BHUJIAWALA & ANR. Respondents
Through: Mr. C. Mukund, Advocate
with Mr. Ashok Jain,
Mr. Pankaj Jain, Mr.
Amit Kasera, Mr.
Auneesh Garg, Mr.
Shashank Sharma and
Ms. Vandana Anand,
Advocates

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

J U D G M E N T

MANMOHAN, J

1. Present petition has been filed under Article 227 of Constitution of India challenging the order dated 21st February, 2009 by virtue of which petitioners-plaintiffs two applications filed under Order 7 Rule 14 of Code of Civil Procedure (hereinafter referred to 'CPC') have been dismissed. While by virtue of first application, petitioners-plaintiffs wanted to bring on record fourteen volumes of documents, by subsequent application petitioners wanted to bring on record two volumes of documents.

2. Relevant observations of the trial Court while rejecting applications filed by the petitioners are reproduced hereinbelow for ready reference:

"The suit had been instituted in the year 1991. Since then both the parties have been filing one application or the other. All the applications filed by each other are being contested very hotly. The parties have even gone to the Hon'ble High Court and also to the Hon'ble Supreme Court twice/thrice. There is a neck and neck fight between the parties. They are litigating with each other diligently, vigorously and without any deterrence. The parties have been taking all precautions in filing applications and documents. Therefore, can it be said that these documents could not be filed earlier due to oversight and inadvertence or there was a human error in not doing so earlier or that the error, if any, was on the part of the functionary or the advisors of the plaintiffs? Certainly not. All the documents except the documents as detailed at Sr. Nos. 83 to 99 of the application dated 28-01-09 were in

the custody of the plaintiffs since long and the documents pertaining to the years 2002, 2006 and 2007 were in their custody for the last seven/three/two years. Therefore, when according to the plaintiffs themselves their photocopies have already been filed in 1996 or 1999 or in 2003, it cannot be said that the original documents or the certified copies could not be filed earlier. What was the hitch for the plaintiffs in not filing the original/certified copies of the documents in 1996, 1999 and 2003 itself.

Secondly, in the application dated 20-01-09 the plaintiffs have also submitted that the framing of additional issues by this court on 14-11-08 has also cast a duty on the plaintiffs to file additional documents in order to prove and discharge the onus of the additional issues and, hence, they made urgent and immediate search for documents. Firstly, the said additional issues have been framed on the basis of the existing pleadings of the parties. Parties are required to file the documents before framing of the issues. Secondly, this stand contradicts the stand taken by the plaintiffs that the documents could not be filed due to inadvertence and oversight. Had the plaintiffs made an honest search for the documents now sought to be filed before framing of issues/additional issues they would have certainly laid their hands on the same and filed them without any delay. Therefore, I fail to understand under what provision of law the plaintiffs can now be permitted to file the documents after the framing of additional issues.

Quite strangely enough, the plaintiffs have even gone to the extent of saying that one of the grounds for not filing the documents at an earlier stage is on account of immediate directions of the Apex court. During the course of arguments at the bar the Ld Counsel for the plaintiffs has contended that the Hon'ble Supreme Court has passed an order dated 1-10-08 in SLP (c) Nos. 22728-22729/2007 – Haldiram Bhujawala & Anr. Vs. Haldiram (India) Pvt. Ltd. in a hurry. When he was asked to explain what did he mean by the words immediate or hurry, he could not give any answer. In my considered opinion, the Ld Counsel for the plaintiffs was /is not justified in making accusations against the highest court of the country before this court. Vide the said

order, the Hon'ble Supreme Court has issued certain directions including a direction to this Court of dispose off the suit as early as possible and preferably within six months from 01-10-08. Therefore, the plaintiffs have even gone to the extent of making accusations against the Apex Court of this country. The said conduct on the part of the plaintiffs is reprehensible.....

Even otherwise, the plaintiffs were required to file their original documents on or before the date of settlement of issues as stipulated in order 13 rule 1 CPC. However, the plaintiffs also did not do so. Therefore, in my considered opinion, the plaintiffs have failed to show any good cause for not filing the documents at the earlier stage. Therefore, these documents cannot be allowed to be filed at this highly belated stage.

Vide order dated 1-10-08 passed in SLP (C) No.22728-22729 of 2007 – Haldiram Bhujiawala & Anr. Vs. M/s. Haldiram (India) Pvt. Ltd., the Hon'ble Supreme Court of India has directed this court to hear and dispose the suit as early as possible and preferably within six months form 1-10-08. The court has also been directed not to show any leniency in the matter of adjournment and to proceed with the trial on day to day basis.

Now, this court has also received a copy of the order dated 3-02-09 passed by a Division Bench of our own Hon'ble High Court in FAO(OS) 155/99 – M/s. Haldiram Bhujiawala & Anr. Vs. M/s. Anand Kumar Deepak Kumar & Anr. wherein the following order has been passed:

“By the order of 1st October, 2008, the Hon'ble Supreme Court directed the Learned District Judge to dispose of the Suit No.188/03 preferably within six months from 1st October, 2008. The said period expires on 1st April, 2009. We naturally expect the Hon'ble Supreme Court's order to be honoured.

List the matter on 15th April, 2009.”

However, it is a matter of great sorrow and anguish that after the passing of said order by the Hon'ble Supreme Court the plaintiffs have

started moving one application or the other and are thus not allowing this court to proceed further. The intention seems to be quite clear. As submitted by the ld Counsel for the defendants, their intention is to delay the disposal of the suit as they have been enjoying the fruits of a stay order passed in 1999.

However, I am of the considered opinion that since the plaintiffs have received the certified copies of the documents filed in suit no.35/08 – Kamla Devi Aggarwal Vs. Shiv Kishan Aggarwal on 22-01-09, the plaintiffs can be allowed to file these documents on the record subject to their proof according to law of evidence. Therefore, the plaintiffs are permitted to file the said documents only subject to their proof according to law of evidence.

In view of the above discussion, I do not find any merit in the application so far as the same relate to filing of the document other than the certified copies of the documents filed in suit no.35/08 – Kamla Devi Aggarwal Vs. Shiv Kishan Aggarwal same.”

3. Mr. Sandeep Sethi, learned senior counsel for petitioners stated that as the present suit was filed in the year 1992, petitioners-plaintiffs in accordance with CPC prevailing then had only to file along with their plaint, documents on which plaintiffs sued upon. He submitted that petitioners-plaintiffs prior to 2002 amendment had not to file along with their plaint, documents relied upon.

4. Mr. Sandeep Sethi, submitted that the impugned order was untenable in law as trial Court failed to appreciate that the time for filing of documents was not yet over, as in the present case issues had not been framed. In this context, he relied upon Order 13 Rule 1 CPC which reads as under:

“1. Documentary evidence to be produced at or before the settlement of issues. – (1) The parties or their pleaders shall produce, at or before the settlement of issues, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.”

5. He also stated that admission /denial of documents is yet to take place and therefore, petitioners-plaintiffs had a right to file documents. He further stated that trial Court failed to appreciate that suit was at the initial stage and till 01st October, 2008 there was uncertainty as to whether respondents-defendants amended written statement would be taken on record or not and, therefore, petitioners-plaintiffs had not taken steps to file their documents.

6. Mr. Sethi, further submitted that by virtue of 2002 amendment in CPC, petitioners-plaintiffs had a right to file documents even at the stage of final hearing of the suit. In this context, he referred to Order 7 Rule 14 sub-rule 3 of CPC, which provision has been introduced in the year 2002. Order 7 Rule 14 sub-rule 3 of CPC is reproduced hereinbelow for ready reference:

“(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.”

7. Mr. Sethi, stated that documents now being sought to be filed by petitioners along with their two applications under Order 7 Rule 14 CPC were not in power and possession of petitioners and, therefore, trial Court should have granted leave for taking the said documents on record. He also submitted that trial Court erred in law by not enquiring as to whether the documents now being sought to be produced by petitioners-plaintiffs were relevant or not and whether production of the same would cause any prejudice to respondents-defendants.

8. Lastly, Mr. Sethi submitted that trial Court ought to have granted leave to produce the documents because their veracity and authenticity was beyond doubt as the same had been issued either by public or statutory authorities or by Courts.

9. Mr. C. Mukund, learned counsel for respondents, at the outset, submitted that petitioners-plaintiffs had essentially filed two applications under Order 7 Rule 14 CPC to overcome and circumvent the orders dated 08th September, 2008 and 22nd December, 2008 passed by trial Court while rejecting the two applications filed by petitioners-plaintiffs under Order 11 Rule 14 CPC for summoning of records from various authorities from all over the country. He stated that the documents now being sought to be produced by petitioners-plaintiffs in sixteen volumes running into thousands of pages were essentially those

documents whose summoning stood rejected by trial Court vide orders dated 08th September, 2008 and 22nd December, 2008 -- which orders had not been challenged and had attained finality.

10. Mr. Mukund, further stated that applications under Order 7 Rule 14 CPC had also been filed by the petitioners to overcome their loss of original dissolution deed dated 16th November, 1974. Mr. Mukund, pointed out that as petitioners-plaintiffs application under Section 65 of Indian Evidence Act had also been rejected vide another order dated 26th February, 2009, the intent of present proceedings was to place those documents on record for which permission to lead secondary evidence had been sought but rejected. He submitted that one of the motives behind filing the present applications was to circumvent and render redundant the order passed in application under Section 65 of Indian Evidence Act.

11. Mr. Mukund, stated that issues in the present case had already been framed by the trial Court on 08th September, 2008 and the same had been re-cast and additional issues had been framed on 04th November, 2008 and 14th November, 2008 on applications filed by petitioners-plaintiffs under Order 14 Rules 3 and 5 CPC. He contended that petitioners-plaintiffs had filed two applications under Order 7 Rule 14 on 20th and 28th January, 2009 respectively-- that is much after not only the issues but additional issues had been framed.

12. Mr. Mukund further stated that the question of admission/denial of documents already stands foreclosed vide order dated 14th November, 2008 wherein additional issues had been lastly re-cast and learned counsel for petitioners-plaintiffs had admitted, *“that all original documents in the power and possession of the plaintiffs have been filed on record of this case or in the connected case titled Kamla Devi Aggarwal Vs. Shiv Kishan Aggarwal bearing Suit No.35/08”*. Mr. Mukund also stated that order dated 22nd December, 2008 showed that admission/denial of documents was confined only to Suit No.35/08 titled “Kamla Devi Aggarwal Vs. Shiv Kishan Aggarwal” and that the same had nothing to do with the present suit. He also further pointed out that petitioners-plaintiffs had already filed their evidence by way of affidavit on 20th January, 2009.

13. Mr. Mukund, further contended that the two applications filed by petitioners-plaintiffs under Order 7 Rule 14 CPC did not contain any averment that documents now sought to be filed by petitioners-plaintiffs were not in power and possession of the plaintiffs. He extensively referred to application dated 28th January, 2009 to show that petitioners-plaintiffs had sought permission to file documents on the ground of their inadvertence and oversight.

14. Mr. Mukund also referred to the new documents sought to be produced by petitioners-plaintiffs to dispute the contention that most of these documents had been issued by statutory or public authorities. For instance, he referred to an affidavit dated 05th January, 2002 of Shri Radhey Shyam Aggarwal and documents pertaining to businesses of M/s. Shivrattan Kamal Kumar, M/s. Gangabishan Moolchand and M/s. Anand Kumar Deepak Kumar.

15. In rejoinder, Mr. Mahender Rana, Advocate, appearing for petitioners referred to and relied upon the following judgments:

A. ***Satnam Singh Sharma v. Triloki Nath Kalia*** reported in ***AIR 1974 Punjab & Haryana 287*** wherein it has been held as under:

“With every amendment or addition in the issues, a fresh opportunity shall have to be granted to the parties by the Court. Moreover, the question whether or not a document would be allowed to be produced by a party or a witness should be left to be decided as and when the occasion keeps on arising during the trial and the Court should not seek to place fetters before hand on the exercise of its own discretion depending on the exigencies of a particular unforeseen situation. The Court should be left free to exercise its discretion on the facts and circumstances of each situation as it arises and the Court should not tie up its hands in such a manner that it is prevented from admitting a document on adequate grounds being made out for its admission. The Court can, in the interests of justice, at all times admit oral or documentary evidence at all stages of the trial subject to such condition as to payment of costs or otherwise as it thinks fit.”

B. ***Santveer Singh v. Additional Civil Judge, Hanumangarh*** reported in ***AIR 2004 Rajasthan 214*** wherein it has been held as under:

“26. Voter list of the year 1980 and a copy of the plaint dated 3-8-89 are concerned, DLC rates and Voter list are public document and so far as copy of the plaint is concerned, its genuineness cannot be doubted. These documents could have been taken on record by the trial Court. The suit was filed before the Amending Acts came into force and the written statement was also filed before the Amending Act came into force, therefore the effect of amendment cannot be given to the act already done by the parties. Moreso, it would also be relevant to mention here that the lower Court should have realized this fact that the procedural law is intended to facilitate and not to obstruct course of substantial justice.

From the overall discussions, it is clear that the trial Court has committed per se illegality while disallowing the application and has not exercised the discretion judiciously. The plaintiff could have been compensated by awarding appropriate cost on the ground of delay.”

16. After having heard the parties at length, I am of the view that Mr. Sethi's contention that the time for filing of documents was not yet over is contrary to facts and untenable in law. It is settled position that all the parties have to produce all documents in their power and possession before settlement/framing of issues. Order 13 Rule 1 CPC is very clear and categorical in this regard.

17. Since in the present case issues had been framed by the trial Court on 08th September, 2008 and they had been subsequently re-cast and reframed at the instance of

petitioners-plaintiffs on 04th November, 2008 and 14th November, 2008, the petitioners-plaintiffs cannot now seek to file additional documents as a matter of right. Further, petitioners' reliance on the fact that admission/denial of documents is yet to take place is misconceived and irrelevant as the petitioners-plaintiffs have admittedly already filed their affidavit by way of evidence on 20th January, 2009. In fact, petitioners/plaintiffs on 14th November, 2008 had admitted that all the original documents in their power and possession were on record. Moreover, after seventeen long years petitioners/plaintiffs cannot complain that they did not have enough/sufficient time to file documents they wish to rely upon.

18. Mr. Sandeep Sethi's further argument that by virtue of 2002 amendment, the petitioners-plaintiffs had been conferred a new right to file documents is not correct. Mr. Sethi's argument that in the year 1992, the petitioner-plaintiffs had neither to produce nor file list of relied upon documents, is also not correct.

19. In fact, even when the petitioners-plaintiffs filed their suit in 1992, Order 7 Rule 14 sub-rule(2) CPC mandated that documents on which plaintiffs rely upon should be entered in a list which should be added or annexed to the plaint. The said list was to specifically state whether such documents are in power and possession of the plaintiffs. Further Order 7 Rule 18

sub-rule (1) CPC prior to its omission on 01st July, 2002, mandated that documents which were not produced or added or annexed in the list attached with the plaint, shall not without leave of the Court be received in plaintiffs' evidence at the hearing of the suit. Order 7 Rule 18 sub-rule (1) of CPC prior to 2002 amendment is reproduced hereinbelow:

"18. Inadmissibility of document not produced when plaint filed. – (1) A document which ought to be produced in Court by the plaintiff when the plaint is presented, nor to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit."

20. In my view, Order 7 Rule 18 sub-rule (1) after being deleted on 01st July, 2002, has been incorporated in identical terms in Order 7 Rule 14 sub-rule (3) CPC. Consequently, no new right has been bestowed upon the petitioners by Order 7 Rule 14 sub-rule (3) CPC.

21. In any event, both under the old Order 7 Rule 18 sub-rule (1) and new Order 7 Rule 14 sub-rule (3) CPC a new document can certainly be produced on behalf of plaintiff at the final hearing of suit, but the same has to be done with leave of the Court. It is not that the plaintiff has a legal vested right to file a document at a belated stage i.e. at the final hearing of the suit. The said provision gives a discretionary power to the Court, which needless to say has to be exercised in a reasonable and legal manner. In fact, this power has to be exercised sparingly

and for some overpowering reason and not as a matter of routine. If petitioners' interpretation of Sub Rule 3 is accepted, it would make it impossible for the trial court to conclude the hearing of any suit.

22. Moreover, in the present case on perusal of applications filed by petitioners-plaintiffs under Order 7 Rule 14 CPC, I am of the view that discretionary power with the trial Court to file additional documentary evidence has been rightly refused. I may mention that in the said applications filed by petitioners-plaintiffs, the only reason given for filing of these documents at a belated stage was, "*on account of human error and inadvertence and oversight that the said documents escaped the notice of the Advocate.*" Consequently, it is not open to the petitioners-plaintiffs to now contend in the present proceedings that the documents could not be filed initially as they were not in their power and possession. In fact, from perusal of documents sought to be filed by the petitioners-plaintiffs, it is apparent that majority of these documents were all throughout in power and possession of petitioners-plaintiffs.

23. On a careful perusal of the file, I am also in agreement with Mr. Mukund's argument that the present two applications had been filed by petitioners-plaintiffs under Order 7 Rule 14 CPC to overcome and circumvent the orders of trial Court rejecting the petitioners-plaintiffs' applications under Order 11 Rule 14 CPC and under Section 65 of Indian Evidence Act. I

further agree with the trial Court that the intent in filing the present petition was to somehow delay the disposal of suit despite a categorical direction by Hon'ble Supreme Court on 1st October, 2008 to dispose of the same expeditiously preferably within six months. Accordingly, in my view, present applications are not even bonafide. Consequently, the case law cited by the petitioners is clearly inapplicable to the facts of the present case.

24. Further, in my view, the impugned order neither suffers from any material irregularity nor the same is in excess of jurisdiction and, consequently, it calls for no interference in Article 227 jurisdiction.

25. Accordingly, present petition and application are dismissed with costs of Rs. 15,000/- to be paid to respondents. The receipt of costs shall be filed before trial Court within a period of two weeks from today.

MANMOHAN, J

April 08, 2009
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