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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (Main) No.138 of 2008 & C.M. Appl. No.1442 of 2008

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08.01.2010

THE KANGRA COOPERATIVE BANK LTD. Petitioner
Through: Mr. Suresh Chand, Advocate.

Versus

PREM SINGH DOGRA & ORS. Respondents
Through: Mr. V.N. Sharma, Advocate.

Date of Order: 8th January, 2010

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

J U D G M E N T

1. By this petition under Article 227 of the Constitution of India, the petitioner has assailed an order dated 18th December, 2007 whereby the learned trial court directed the petitioner that the petitioner should furnish copy of all the documents as demanded by the defendant and also file the same on the court file.

2. It is submitted by counsel for the petitioner that the order passed by the learned trial court shows non-exercise of jurisdiction by the trial court. The trial court passed the order without even discussing the relevancy of the documents and without considering as to what was the suit and what was the nature of documents being sought. It is also stated that the order of the trial court was perverse and the wholesome summoning of bank record was going to jeopardize the entire function of bank. The trial court also did not consider that third party's information could not be leaked to anybody without written permission of the party concerned.

3. The brief facts relevant for the purpose of deciding this petition are that the bank filed a suit against respondents claiming damages for defamation because the respondents had circulated pamphlets and booklets defaming the bank and its management. In the written statement filed by the defendants, the defendants denied being author of the booklet and took the plea that the booklet did not contain signatures of any of the defendants and no case was made out as the booklet lacks authenticity and genuineness. It was categorically stated that defendants had no concern with publication of the booklet. Thus, the issue which the trial court was supposed to decide in the matter was whether the defamatory material was authored by the defendants or not and if the defamatory material was authored by the defendants, whether it was published/circulated as alleged in the plaint by the defendants and whether the so published material tarnished the reputation of the plaintiff and the reputation of the plaintiff was lowered in the eyes of general public, friends, associates, etc. The other issue that would have arisen was whether the defendants were liable to pay damages to the plaintiff and if so, to what extent.

4. The defendants made an application under Section 151 CPC seeking plethora of documents from the plaintiff which included proceedings in the Election held on 25th August, 2002, list of the members/shareholders of the bank, proceedings of the General Body Meetings with signatures of members of shareholders, declaration of financial position of elected members of Board of Directors, list of shareholders and their relation/blood relations; Annual Report with agenda, minutes of meetings held on 6th October, 2002, etc. List contained 74 items and by this the defendant virtually asked for entire record of the bank including loan record, list of defaulters, observation of Reserve Bank of India for last ten years, details of Directors holdings for last ten years, etc. In the list of documents, the defendants had not stated what was the relevancy of the

documents and what issues were sought to be proved.

5. I consider that before allowing any document to be produced by the plaintiff, the learned trial court was supposed to apply mind on each and every document sought by the defendants and to consider the relevancy of the document, keeping in view the claim of the plaintiff and the defence of the defendants. Where the defendants' defence was that they were not author of the booklet and had not published it, the question of summoning any of the documents sought in the application did not arise. If the defendants had taken the defence that they were the authors of the booklet and whatever was stated in the booklet was correct and true and they wanted to show from the bank record that the assertions in the booklet were truthful, then only the defendants could have summoned only that bank record which they needed to prove the assertions made in the booklet and not any other record. The trial court while deciding interim applications is supposed to apply judicial mind and not to allow applications having such vital effect on the other party in a casual manner by non-application of mind. Where the trial court decides application without considering the relevant provisions of law, it acts without jurisdiction.

6. Order VIII Rule 1A sub-Rule 3 CPC provides that where the defendants relies upon the document not in their possession, they have to file a list of documents and have also to state in whose possession those documents are and what was the relevancy of documents. In absence of showing relevancy of documents, the court cannot order opposite party to file documents. The provisions for discovery of documents contained in CPC are meant to do substantial justice and not to harass the parties or to prolong a case. The tendency of calling unnecessary documents must be curbed and not encouraged. The court has to act as a watchdog that the parties should not take undue advantage of the procedural provisions of CPC to prolong the case.

7. In the present case, the court below allowed the application observing that the plaintiff (petitioner herein) had not shown that these documents were irrelevant. There was no obligation on the petitioner to show that these documents were irrelevant. In fact, the obligation was on applicant to show that the documents were relevant and how the documents would help in proving his case, namely, that he had not authored the booklet.

8. I find that the order of the trial court is without jurisdiction and without application of mind. The petition is hereby allowed and the order of the trial court is set aside.

SHIV NARAYAN DHINGRA J.

JANUARY 08, 2010
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