

**Court No. - 1**

**Case :-** MATTERS UNDER ARTICLE 227 No. - 8553 of 2023

**Petitioner :-** Kalwa And Another

**Respondent :-** Keshav Kumar

**Counsel for Petitioner :-** Shyama Charan Tripathi,Rajesh Singh

**Counsel for Respondent :-** Nipun Singh

**Hon'ble Jayant Banerji,J.**

1. Heard Shri Rajesh Singh, Advocate, appearing for the petitioner and Shri Nipun Singh, Advocate, appearing for the plaintiff-respondent.

2. This petition has been filed seeking to set aside the order dated 7.7.2023 passed by the Civil Judge (Senior Division) FTC/ Additional Chief Judicial Magistrate, Gautam Budh Nagar in Civil Suit No. 409 of 2013, (Keshav Kumar Vs. Kalwa and others).

3. The contention of the learned counsel for the petitioner is that an application bearing paper no. 72C was filed by the defendant-petitioner seeking a relief for rejecting the vakalatnama of one Rajiv Gehlot, Advocate and to reject the written statement 30A and the defendant No. 1 be permitted to lead additional evidence in accordance with the written statement paper No. 24A. It is contended by the learned counsel that by means of the impugned order, the application for leading additional evidence has been rejected solely on the ground that the case is listed for final hearing and the evidence is at an advance stage. Learned counsel for the petitioner has relied upon an order of the Supreme Court dated 17.5.2022 passed in Civil Appeal No. 4096 of 2022 to contend that even if there is some delay, since rules of procedure are hand-maid of justice, therefore, some cost could have been imposed by the trial court rather than declining the production of documents. It is contended that denial of producing the documents would result in failure of justice. Learned counsel has also referred to Order 8, Rule 1-A of the C.P.C. to contend that it is open for the court to grant leave to the defendant to produce documents which shall be received in evidence at the hearing of the suit.

4. Learned counsel for the respondent has urged that earlier an application was filed by the defendant in the suit aforesaid for consolidation of two cases, namely, Original Suit No. 409 of 2013

that was filed by the plaintiff-respondent and Original Suit No. 412 of 2013 that was filed by the defendant-petitioner, both of which arise from the same cause of action and similar relief has been sought. It is stated by learned counsel that the aforesaid application for consolidation of suit was rejected by an order dated 15.12.2018 passed by the trial court which has become final.

5. A certified copy of the application 72C has been enclosed as Annexure No.3 to this petition. In the prayer made in the last paragraph of this application appearing on page 95 of this petition, the relief sought is as follows.

*"अतः प्रार्थना है कि राजीव गहलौत एडवोकेट का वकालतनामा एवं प्रतिवाद पत्र 30- क पत्रावली पर निरस्त कर प्रतिवादी सं० 1/ प्रार्थी को अपना अतिरिक्त साक्ष्य शपथ पत्र अपने प्रतिवाद पत्र 24-क के अनुरूप पत्रावली पर देने की अनुमति दी जाकर, साक्ष्य पूर्ण होने के उपरान्त दोनों हीवादों में अन्तिम बहस एक साथ सुनी जाकर दोनोंवाद एक साथ निर्णीत किये जायें।"*

6. The defendant-petitioner in the aforesaid application 72C has craftily incorporated several prayers into one. Firstly, it has been sought that the vakalatnama of one, Advocate Rajiv Gehlot be rejected. Secondly, the written statement 30A filed by the defendant be rejected. Thirdly, the defendant be permitted to submit additional evidence in accordance with the written statement 24A. Fourthly, after the evidence is concluded, both the cases be heard for final hearing together and they be decided together.

7. As far as the aspect of consolidation of the two suits is concerned, as correctly pointed out by learned counsel for the respondent, the order dated 15.12.2018 has put this aspect to rest. The order has become final and inasmuch as it was not challenged. As far as rejection of the vakalatnama is concerned, there does not seem to be any material before the trial court that could justify such a direction. Rejection of the written statement 30A cannot be ordered by the court. It is pertinent to mention here that neither the copy of the written statement 30A nor copy of the written statement 24A has been filed by the petitioner in this petition. However, learned counsel for the petitioner has stated that the written statement 24A is dated 17.5.2013 and the written statement 30A was filed on 17.8.2013. Be that as it may, learned counsel for the petitioner has not been able to demonstrate that what power does the court have to reject the written statement. Both the written statements are on record of the suit and the petitioner cannot seek

to resile from the written statement on record before the trial court. With regard to the additional evidence being furnished in terms of Rule 1A of Order 8 C.P.C., which provision was introduced in the C.P.C. from the year 2002, the court is vested with the discretion to consider an application for leading additional evidence even at the stage of hearing. As noticed by the Supreme Court in the order referred to by the learned counsel for the petitioner, costs can be imposed rather than to decline the production of the document.

8. A perusal of the impugned order reveals that the case was listed for final hearing on 16.4.2014 but the matter was not heard and the case is being adjourned repeatedly. The trial court has stated that on record is an order of the High Court directing expeditious disposal of the suit. The trial court observed that the testimony of DW1 has already been completed in the year 2014 and after nearly 10 years, additional evidence is sought to be produced, which is only to delay the proceedings. Accordingly, the application was dismissed. It is pertinent to mention here that the order of the High Court that is referred in the impugned order dated 7.7.2023 has not been filed by the petitioner and neither does the learned counsel for the petitioner have the number of the petition in which the order was passed nor has he a copy of the said order. Any order that may be passed by this court in this petition cannot to be in contradiction to the previous order passed by the High Court which has not been enclosed. Under the circumstances, even though, ordinarily, this court may consider leniently, filing of additional evidence by the defendant, given the mandate of Rule 1-A of Order 8 C.P.C., however, in the circumstances existing in the present case, where by an order of the High Court, the trial court has been directed to conclude the trial expeditiously, this court declines to interfere in this petition. The petitioners have neither challenged the order of the High Court nor have sought review of the same. Be that as it may, the petitioners have concealed material documents from this Court and as such deserve no indulgence.

9. This petition is therefore **dismissed**.

**Order Date :- 27.10.2023**

A. V. Singh

(Jayant Banerji, J.)