

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
CRP No.21 of 2024

John Wiley and sons and another

..... *Petitioner(s)*

V E R S U S

The National Institute of Technology and others

..... *Respondent(s)*

For Petitioner(s)	:	Mr. S.M. Chakraborty, Sr. Advocate, Mr. A. Acharjee, Advocate.
For Respondent(s)	:	Mr. Bidyut Majumder, D.S.G.I., Mr. S. Mahajan, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
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25/04/2024

Heard Mr. S.M. Chakraborty, learned senior counsel assisted by Mr. A. Acharjee, learned counsel appearing for the petitioners and also heard Mr. Bidyut Majumder, learned D.S.G.I and Mr. S. Mahajan, learned counsel appearing for the respondents.

[2] The plaintiffs' petition to adduce the following documents at the stage of cross-examination of the plaintiffs' witness has been rejected by the impugned order dated 12.02.2024 by the learned Civil Judge (Sr. Division), West Tripura, Agartala, Court No.1 in Money Suit No.19 of 2016.

- (1) Purchase order No.F.7(2)-NIT/LIB/PUR/2010/10981 dated 30.03.2012.
- (2) Invoice dated 30.03.2012 with EAL No.EAL00000092699.

[3] The suit was instituted for recovery of an amount of Rs.87,14,508.46/- from the defendants as subscriptions amount for the

period from 01.01.2013 to 31.12.2013. The plaintiffs had asserted in the plaint that they had entered routine transactions with the defendants in the year 2013 and used to provide online access to its journals but the defendants failed to pay the subscription amount for the period from 01.01.2013 to 31.12.2013. The learned trial Court while considering the plaintiff's application under Order VII Rule 14(3) took note that the plaintiffs had nowhere contended in the plaint that they had transactions with the defendants in the year 2012. The averments in the plaint relating to the transactions which raised the cause of action are reflected from paragraph 6 onwards. Nowhere in the plaint it was contended by the plaintiffs that they had transactions with the defendants in the year 2012. The learned trial Court, therefore, refused to allow the prayer in exercise of its discretion under Order VII, Rule 14(3) of CPC as according to it these documents were beyond the pleadings of the plaintiffs and not relevant in determination of the issue involved in the suit. The learned trial Court also considered certain decisions cited by the plaintiffs and observed that they lay down the law that documents if found essential for determination of the dispute involved in a suit may be allowed to produce at a later stage even at the evidence stage, with the leave of the Court. But, in the present case the documents which the plaintiffs intend to file are in no way connected with the issues involved in this suit and there is absolutely no mention about these documents. The learned trial Court also held that it is an old pending case of 2016 in which last opportunity was accorded to the plaintiffs to produce witnesses to face cross-examination and it was cautioned that if they failed to produce the

witnesses on the next date they would not be allowed any further opportunity for the aforesaid purpose.

[4] Mr. S.M. Chakraborty, learned senior counsel for the petitioner has referred to the application under Order VII Rule 14 which is at annexure-6 and specifically the averments made at paragraph 5 and 6 of the application which seek to rely upon these two documents as relevant to determine the past practice adopted by the petitioners /plaintiffs and the respondents/defendants and necessary for determining the real issue between the parties. According to them, if these documents are produced the defendants would not be put to any irreparable harm. They strengthen their existing claim and are also necessary to prove that the defendants had come before the Court with unclean hands by making false statements to avoid payment to the petitioners.

[5] Learned senior counsel for the petitioners has referred to a decision rendered in case of ***Sugandhi (dead) by Lrs. and another versus P. Rajkumar*** represented by his power agent Imam Oli in ***Civil Appeal No.3427 of 2020*** dated 13.10.2020 which is on the interpretation of the provisions of Order VIII Rule IA which provides for procedure for production of documents by the defendant. Learned counsel submits that the Apex Court has held that procedure is a handmaid of justice. Therefore, procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards

doing substantial justice rather than relying upon procedural and technical violation. Litigation is nothing but a journey towards truth which is the foundation of justice and the courts are required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the Court should take a lenient view when an application is made for production of the documents under sub-rule (3) of Order VIII Rule 1A which is in similar language and import as Order VII Rule 14(3).

[6] On the other hand, Mr. Bidyut Majumder, learned counsel for the respondents has strongly opposed the prayer. He submits that the suit is of the year 2016. The issues have been framed long back. By an order dated 02.03.2021, the learned trial Court had clearly observed that plaintiffs have already filed a document and no leave is sought to produce any document subsequently. Accordingly, they were restrained from filing any document. Further, plaintiffs have tried to adduce these documents at the stage of cross-examination of their witnesses. Since there are no averments supporting the production of these two documents in the plaint, it would amount to setting up a new case not pleaded originally which he is bound to take the defendants by surprise. The plaint does not contain any averments which have any semblance or connection with these two documents which are purchase order and an invoice dated 30.03.2012 which is of a date prior to the alleged transactions which gave rise to the cause of action to the plaintiff to seek relief.

[7] Learned counsel for the respondents has also relied upon a decision of the Apex Court in a *Civil Appeal of 2023* arising out of *Special Leave Petition (Civil) No.14445 of 2021* in case of *Mohammed Abdul Wahid versus Nilofer and another* dated 14th December, 2023. The civil appeal arose on account of the judgment delivered by Division Bench of the Bombay High Court on three questions which were framed and referred by the learned Single Judge of that Court in view of two allegedly conflicting decisions. The questions have been referred to under paragraph 5.3 of the judgment.

[8] Learned counsel for the respondents further submits that essentially the Apex Court considered provisions of Order XVIII Rule 3A and other relevant provisions of CPC and also the provisions of the Indian Evidence Act, particularly Sections 137 to 138, 139, 154 and 155 and concluded at paragraph 31 that save and except the cross-examination part of a civil suit where there is a freedom to produce documents for either of the two purposes i.e. cross-examination of the witnesses and/or refreshing the memory of the witness. At no other point shall such confrontation be allowed without such document having accompanied the plaint or written statement filed before the Court. Reference was made to Order VII Rule 14(4) which exempts parties from this obligation to produce document for the limited purposes of cross-examination or jog the memory of a witness. Therefore, the attempt of the plaintiffs/petitioners to adduce these two documents at the stage of cross-examination of their witnesses was rightly rejected by the learned trial Court. This Court should, therefore, refuse to interfere in the matter.

[9] I have heard the submissions of learned counsel for the parties at length and also taken note of the provisions of the Civil Procedure Code which are required to appreciate the issue at hand. I have also gone through the decisions cited by learned counsel for the parties. This Court in exercise of the powers under Article 227 of the Constitution of India is required to see whether the impugned order of the learned trial Court herein suffers from jurisdictional errors. From the canvass of facts pleaded and referred to in the forgoing part of the order, it is quite obvious that plaintiffs/petitioners herein sought to adduce two documents i.e. (a) purchase order No.F.7(2)-NIT/LIB/PUR/2010/10981 dated 30.03.2012 and (b) invoice dated 30.03.2012 with EAL No.EAL00000092699 relating to certain transactions with the defendants in the year 2012 without any specific pleading in the plaint or statement as to its relevance.

[10] The averments in the plaint reflect transactions between the parties for the period from 01.01.2013 to 31.12.2013 in respect of which the plaintiffs sought recovery of the amount of Rs.87,14,508.46/-. The entire cause of action of the plaintiffs was based upon transactions undertaken in the calendar year 2013. Nowhere in the plaint they had made averments as to any transaction with the defendants in the year 2012. The list of documents enclosed to the plaint also starts from the purchase order dated 29.03.2013, invoice dated 26.03.2013 and other copies of e-mails, legal notice etc. all of the order 2013 and some of them of the year 2015 and 2016. These present documents are being sought to be added by the plaintiffs to adduce evidence

and that too at the stage of cross-examination of the plaintiffs' witness. In the absence of any averment in the pleadings to that effect, evidence which are beyond the pleadings could not be brought on record to supplement the case set up by the plaintiffs at the time of institution of the plaint. Plaintiffs have also not prayed for any amendment of the plaint to that effect. Defendants are required to meet the case set up by the plaintiffs and, therefore, in the absence of any pleading to that effect adducing of such documents at the stage of cross-examination of the plaintiffs' witnesses and after framing of the issues would amount to setting up a new case beyond the pleadings with which the issues involved in the suit had no relevance.

[11] The provisions of Order VII Rule 14 are extracted hereunder:

“14. Production of document on which plaintiff sues or relies.-(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(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.

(4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.”

Order VII Rule 14(3) allows 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 to be received in evidence on his behalf at the hearing of the suit with the leave of the Court. This provision confers jurisdiction upon

the learned Court to examine as to whether such documents were required to be produced by the plaintiff when the plaintiff was presented and was required to enter in the list to be added to the plaint but could not be produced.

[12] In the facts of the instant case the documents which are now being sought to be adduced were not such documents which ought to be produced when the plaint was presented or were required to be added or annexed to the list to be produced along with the plaint since there are no pleadings to connect the instant two documents from the cause of action which has been set up by the plaintiffs to seek relief. The learned trial Court, therefore, rightly refused to allow adducing of these two documents as they were completely beyond the pleadings and had rather no relevance to the determination of the issue involved in the suit. The learned trial Court, therefore did not commit any error of jurisdiction which requires correction in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

[13] This Court may also observe that the cases cited by the parties are not applicable to the present facts of the case. The case of *Sugandhi* (*supra*) relates to procedure for production of documents by the defendant as is permissible under Order VIII Rule 1-A of CPC. The opinion of the Court, therefore, has been rendered in that context. In case of *Mohammed Abdul Wahid* (*supra*), the Apex Court was seized with the answer to three questions referred to by the learned Single Judge

and answered by the learned Division Bench on (i) whether a party to a suit i.e. plaintiff or defendant is also a witness and the provisions of Order VII Rule 14, Order VIII, Rule 1-A(4)(a) and the Order XIII Rule 1(3)(a) of CPC need to be interpreted and applied by creating party with the witness (ii) whether documents can be directly produced at the stage of cross-examination of a party and/or a witness to confront him/her without seeking any prior leave of the Court under Order VII, Rule 14(4), Order VIII Rule 1-A(4)(a) and the Order XIII Rule 1-3(a) of the CPC (iii) whether observations made in the judgment in case of *Purushottam* (*supra*) and *Vinayak M Dessai* (*supra*) referred to by the learned Single Judge of the Bombay High Court, to the effect that permitting production of documents directly at the stage of cross-examination of the witness and/or of a party to a suit would amount to spring in a surprise and hence it is impermissible are correct in the light of the plain reading of the aforesaid provisions.

[14] The Apex Court after consideration of the relevant provisions of CPC as above and the decisions rendered earlier held at paragraph 26 that there is freedom to produce documents for either of the two purposes i.e. cross-examination of witnesses and/or refreshing the memory to serve the purposes of the parties to the suit. It was also held that the proposition that the law differentiates between a party to a suit and a witness for the purposes of evidence is not correct. It is in that context that the Apex Court at paragraph 31 of the judgment held that save and except at the time of the cross-examination part of a civil suit and/or refreshing the memory of the witness, at no other point shall such confrontation be allowed, without such

document having accompanied the plaint or written statement filed before the Court.

[15] In the facts of the present case, however, the order of the learned trial Court under Order VII Rule 14(3) refusing to allow adducing two documents referred to above at the time of cross-examination of the plaintiffs' witnesses is proper and well within the boundary of its jurisdiction as nowhere in the plaint it was contended that they had transactions with the defendants in the year 2012 and that these documents had any relevance to the determination of the issue involved in the suit which related to recovery of amount from the defendants as subscriptions for the period from 01.01.2013 to 31.12.2013.

[16] As such, this Court does not find any error in the impugned order dated 12.02.2024 passed by the learned Civil Judge(Sr. Division), West Tripura, Agartala, Court No.1 in Money Suit No.19 of 2016 calling for any interference. Accordingly, the instant civil revision petition is dismissed. Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH) CJ

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SIDDHARTHA LODH

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