

GAHC010176372023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/260/2023

SM CORPORATION LTD
A COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956 AND
HAVING ITS REGISTERED OFFICE AT 3RD FLOOR, ANIL PLAZA, G.S.
ROAD, GUWAHATI, ASSAM- 781005,
REPRESENTED THROUGH ITS AUTHORISED REPRESENTATIVE MR.
MANASH DAS.

VERSUS

AMIT BHAIJANKA
PROPRIETOR OF M/S. GUWAHATI ISPAT
HAVING ITS OFFICE AT FOREST GATE,
NARENGI, GUWAHATI- 781026,
ASSAM.

For the Petitioner(s) : Mr. J. Roy, Sr. Advocate

For the Respondent(s) : Mr. A. Sancheti, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 26.04.2024

1. The instant petition filed under Article 227 of the Constitution challenging

the order dated 01.11.2022 passed in Misc. (J) Case No.98/2019 arising out of Money Suit No.216/2015 by the Court of the learned Civil Judge No.3, Kamrup (M) at Guwahati whereby the application filed by the Petitioner who was the Plaintiff in the suit under Order XI Rule 14 read with Section 151 of the Code of Civil Procedure, 1908 was rejected.

2. This Court has perused the impugned order dated 01.11.2022 wherein the learned Trial Court i.e. the Court of the learned Civil Judge No.3, Kamrup (M) at Guwahati had rejected the said application on the ground that the Petitioner who is the Plaintiff did not mention in the plaint as is required under Order VII Rule 14(3) as to under whose possession and custody, legal notice dated 05.12.2014 as well as the invoices were lying.

3. The learned Trial Court also observed that the Defendant has denied that the said legal notice dated 05.12.2014 and the copy of the invoices as mentioned in Annexure-A to the application filed under Order XI Rule 14 were lying in their custody.

4. Taking into account the above, in the opinion of this Court, it cannot be said that the learned Trial Court had committed any jurisdictional error in passing the impugned order dated 01.11.2022 insofar as rejecting the application for directing the Respondent herein who was the defendant in the suit to produce the legal notice dated 05.12.2014 as well as the invoices.

5. Be that as it may, it is also seen from the said application which has been filed under Order XI Rule 14 that there is an alternative prayer that in the circumstance, the defendant failed to produce the said legal notice dated 05.12.2014 and the invoices, the plaintiff may be permitted to adduce secondary evidence.

6. This Court duly takes note of that vide the order dated 01.11.2022, the learned Trial Court did not decide the said aspect of the matter rather only have noted the submission made by the Defendant that there is no application filed under Section 65 of the Indian Evidence Act, 1872.

7. Taking into account the above, this Court is of the opinion that the order dated 01.11.2022 does not require any interference. Be that as it may, the Petitioner herein who was the plaintiff would be at liberty to file an appropriate application in terms with Section 65 of the Indian Evidence Act, 1872 for the purpose of adducing the legal notice dated 05.12.2014 and the invoices as secondary evidence. If such application is filed, the learned Trial Court shall duly consider the same as per the extant laws without being influenced by the order dated 01.11.2022.

8. With above, the instant petition stands disposed of.

9. The interim order dated 21.08.2023 passed in this proceedings stands vacated. As the parties are duly represented, they are directed to appear before the learned Trial Court on 01.06.2024 on which date, the Petitioner herein would be at liberty to file such application under Section 65 of the Indian Evidence Act, 1872, if so advised.

JUDGE

Comparing Assistant