

GAHC010198632023



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

Case No. : CRP(IO)/294/2023

MD. GOWHAR KHAN
S/O LATE AFSAR KHAN, R/O WARD NO. 8, DR. ZAKIR HUSSAIN ROAD,
DHUBRI TOWN, DIST-DHUBRI, ASSAM, PIN-783301

VERSUS

SANOWAR HUSSAIN
S/O PAUMUSA SHEIKH, R/O VILL AND P.O.-JURIGAON, P.S.-LAKHPUR,
DIST-GOALPARA, ASSAM, PIN-783120

Advocate for the Petitioner : MR. N SARKAR

Advocate for the Respondent : MR. A C SARMA

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

12.02.2024

Heard Mr. A. Biswas, learned counsel for the petitioner as well as Mr. A. C. Sarma, learned senior counsel appearing for the respondent, assisted by Mr. G. Bharadwaj, Advocate.

2. This is an application filed under Article 227 of the Constitution of India challenging the order dated 28.07.2023 passed by the learned Civil Judge (Sr.

Division), Dhubri in Misc. (J) Case No. 32/2023 arising out of Money Suit No. 06/2016.

3. The respondent filed a money suit against the present petitioner praying for recovery of Rs.70,15,200/-. In the plaint, respondent has claimed that he already paid total amount of Rs.48,00,000/- out of the aforesaid amount to the petitioner on different occasion by depositing the same in the bank account of the petitioner. Thereafter, a criminal case was filed and several documents were seized by the police in connection with the said criminal case.

4. In the aforesaid money suit, the respondent exhibited those documents by producing their photocopies. In his cross-examination, the respondent stated that the originals of those documents were in the police custody and therefore, he could not produce originals of those documents.

5. In that way, the respondent cross-examined four witnesses and the cross-examination of the DWs had started. At that time, the respondent filed an application before the court below under Order 18 Rule 17 of the CPC stating that he had received the originals of the exhibits 1 to 6 from the police custody and therefore he wanted to exhibit the originals. The respondent also prayed that for the aforesaid purpose, the PW-2, who was the Bank Manager, is required to be re-examined.

6. The petitioner objected to the said prayer on the ground that the respondent has been trying to fill up the lacuna of this case. However, the trial court allowed the prayer of the respondent.

7. Being aggrieved by the aforesaid order, the present revision petition has been filed

8. In order to buttress his argument, Mr. Biswas has relied upon the judgment that was rendered in **K.K. Velusami v. N. Palanisamy**, reported in (2011) 11 SCC 275. Para 19 of the said judgment is quoted under:

”19. We may add a word of caution. The power under section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the

evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs”.

9. Per contra, Mr. Sarma has submitted that the provision of Order 18 Rule 17 of the CPC enable the courts to clarify doubts and to come to a definite opinion.

10. I have considered the submission made by the learned counsel for the both sides.

11. It is true that the powers given under Order 18 Rule 17 of the CPC is sparingly exercise in appropriate cases. In the plaint itself, the respondent has stated about the existence of the criminal case and in his cross-examination he has stated that the original copies of the Exhibits 1 to 6 were seized by the Police in that case and when he got those documents he wanted to exhibit the originals and therefore, he filed the application praying for re-examination of those documents.

12. This court is of the opinion that refusal to allow the respondent to produce the originals in the suit would be prejudicial to the respondent as it might affect the fate of the entire suit. Therefore, this court does not find any jurisdictional error in the impugned order. Hence, the present petition is found to be devoid of merit and stands dismissed accordingly.

JUDGE

Comparing Assistant