

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.119/2024

1. Smt. Uma Deb, W/O. Late Ashok Sankar Deb,
2. Smt. Sikha Deb (Sen), D/O. Late Ashok Sankar Deb,
3. Smt. Rekha Deb (Sarkar), D/O. Late Ashok Sankar Deb,
4. Smt. Rina Deb (Shil), D/O. Late Ashok Sankar Deb,
5. Sri Ashis Deb, S/O. Late Ashok Sankar Deb,
6. Sri Biswanath Deb, S/O. Late Ashok Sankar Deb,
7. Smt. Purnima Deb, D/O. Late Ashok Sankar Deb,

All are residents of Village-Rajnagar, P.O. & P.S.-Teliamura, District-Khowai, Tripura.

..... Plaintiff-Petitioner(s).

V E R S U S

1. The State of Tripura, represented by the Secretary to the Government of Tripura, Revenue Department, Agartala.
2. The District Magistrate & Collector, Khowai District, Khowai.
3. The Chief Engineer, PWD(R&B), Tripura, Capital Complex, Agartala.
4. The Executive Engineer, PWD(R&B), Teliamura, Khowai District.
5. The Sub-Divisional Magistrate, Khowai District.

.....Defendant-Respondent(s).

For Petitioner(s)	: Mr. Sankar Kr. Deb, Sr. Advocate, Mr. Ranjit Dasgupta, Advocate.
For Respondent(s)	: Mr. Dipankar Sarma, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

05/02/2025

Heard Mr. Sankar Kr. Deb, learned senior counsel assisted by Mr. Ranjit Dasgupta, learned counsel appearing for the plaintiff-petitioners and Mr. Dipankar Sarma, learned Addl. Government Advocate appearing for the defendant-State respondents.

2. The prayer to introduce new documents under Order VIII Rule 1A(3) of the Code of Civil Procedure (CPC, for short) by the defendants/

respondents herein was allowed by the impugned order dated 23.09.2024 passed on an application under Section 114 read with Section 151 of the CPC by the learned Civil Judge (Jr. Division), Court No.2, Khowai Judicial District, Khowai, Tripura in Civil Misc. case No.03 of 2023 arising out of T.S. No.17 of 2017. This same prayer was rejected twice earlier vide orders dated 27.09.2023 and 22.11.2023.

3. It is not disputed that these documents were not referred to or relied upon in the written statement of the defendants/respondents herein vide Annexure-3. The best averment that is available in the written statement is at paragraph-9 which says that the defendants crave the leave of the Court to file additional written statement and copies of documents before the Court if it is necessary at all for the disposal of the suit. However, no additional written statement was filed nor copies of the documents were filed except that before framing of issues, a list of such documents was placed on record by the defendants. Such a prayer is being made at the stage of cross-examination of the defendant witnesses which has been strongly contested.

4. By the first order dated 27.09.2023, the learned trial Court declined the prayer holding that petition under Order XI Rule 14 read with Section 151 of the CPC is not maintainable. The second application was made under Order VIII Rule 1A(3) read with Section 151 of the CPC vide Annexure-15 stating that 19 nos. of original documents which are under the power and possession of the District Magistrate & Collector are sought to be produced. The Firisti, i.e. the list of those documents were earlier placed before the learned Court on 25.10.2019, i.e. before framing of the issues. This was again objected to by the plaintiffs and rejected by the learned trial Court vide order

dated 22.11.2023 on the ground that second petition for production of these documents is not maintainable and it is a misuse of precious time of the Court. The cross-examination of the defendant witnesses was fixed thereafter. The last application invokes the power of review of the learned trial Court read with the inherent powers of the Court under Section 151 of the CPC for production of the very same documents which are enumerated at paragraph-5 thereof (Annexure-18). The same has been allowed on this occasion by the learned trial Court with the reasoning that there are sufficient grounds for review of the order dated 22.11.2023 as the defendants had discovered that they were negligent in providing the important documentary evidence along with their written statement before the Court but the firisti of the documents are still lying in the record. Therefore, the review petition was allowed for finding out the truth and for meeting the ends of justice and that the same will not prejudice the plaintiffs. This has aggrieved the petitioners to approach this Court.

5. Mr. Sankar Kr. Deb, learned senior counsel appearing for the plaintiff-petitioners, has drawn the attention of this Court to the written statement of the defendants where no such reference is made to any of these documents. It is submitted that as is the settled law, evidence cannot be produced divorced from the pleadings. It is also submitted that the plaintiffs would be taken by surprise if such documents which are not even reflected in the pleadings i.e. written statement of the defendants are being produced at the stage of cross-examination of defendant witnesses. It is submitted that application under Order VIII Rule 1A(3) of the CPC once rejected earlier could not have been allowed in the wake of the settled principles of law and the fact

that there are no pleadings to that effect in the written statement. Therefore, the instant petition may be allowed.

6. On the part of the respondents, Mr. Dipankar Sarma, learned Addl. Government Advocate, has defended the impugned order. He submits that the first order of rejection dated 27.09.2023 was passed on the ground that the application is not maintainable under Order XI Rule 14 of the CPC read with Section 151 of the CPC. Therefore, the second application was filed invoking the correct provision under Order VIII Rule 1A(3) read with Section 151 of the CPC. However, since the same was summarily rejected, a review petition was filed under Section 114 of the CPC read with Section 151 thereof which has been rightly allowed by the learned trial Court. The learned counsel for the defendants/respondents has referred to a recent decision of the Apex Court in the case of *Mohammed Abdul Wahid vrs. Nilofer & another [SLP (Civil) No.14445 of 2021]* dated 14.12.2023, in particular paragraphs-22 and 32 thereof. It is submitted that the Apex Court has dealt with the precedents on the subject and the relevant provisions of the CPC and held that the distinction between the "plaintiff's witnesses" and the "defendant's witnesses" has been negated. It is permissible under Order VIII Rule 1A(3) to produce a document to confront or jog the memory of a witness, but the same would not be permissible as applied to a party to a suit, would create an artificial distinction, which otherwise does not serve any purpose of law. It is submitted that these documents are very vital for the defendant's case. Therefore, the impugned order may not be interfered.

7. I have considered the submissions of learned counsel for the parties and taken note of the relevant materials placed from record. From the

conspectus of facts and circumstances referred to above, it is evident that the documents which are now being sought to be adduced by the defendants at the stage of cross-examination of defendant witnesses are not such which have any reference in the written statement of the defendants (Annexure-3). Only a list of documents was submitted by them before framing of the issues.

8. It is trite law that what is not pleaded cannot be argued as for the purposes of adjudication. It is necessary for the other party to know the contours of the case it is required to meet. It is equally well settled that the requirement of having to plead a particular argument does not include exhaustively doing so. The Apex Court in the case of *Mohammed Abdul Wahid* (supra) has reiterated this principle in so many paragraphs also referring to the judgment of *Ram Sarup Gupta vrs. Bishun Narain Inter College* reported in (1987) 2 SCC 555.

9. As is apparent in the facts of the present case, there is no such pleading which refers to these documents sought to be adduced by them at the stage of cross-examination of the defendant witnesses. From perusal of the orders passed by the learned trial Court dated 27.09.2023 and 22.11.2023 and the applications made by the defendants, it is clear that such prayers were declined after taking note of the grounds of objection by the plaintiffs. In such an event, the impugned order passed on a review application by the defendants cannot be sustained in the eye of law as the very fundamental requirement of pleadings to support introduction of such documents at the stage of cross-examination of defendant witnesses is completely lacking in the case.

10. Accordingly, the revision petition is allowed. The impugned order dated 23.09.2024 passed by the learned Civil Judge (Jr. Division), Court No.2, Khowai Judicial District, Khowai, Tripura in Civil Misc. case No.03 of 2023 arising out of T.S. No.17 of 2017 is set aside.

Stay order dated 08.01.2025 stands vacated.

11. The present revision petition is disposed of.
Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ



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