

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 553 of 2014 (O&M)
Date of decision: 17.07.2015

M/s Durga Rice and General Mills and others

... Petitioners

versus

Sudarshan Kumar and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Rakesh Chopra, Advocate, for the petitioners.

Mr. Aseem Kalia, Advocate for

Mr. Premjit Kalia, Advocate for the respondents.

K.Kannan, J.

The revision is against the order passed by the Court dismissing an application filed by the defendant in the trial Court seeking for production of some account books said to be in the custody of the plaintiff. These account books related to a firm that stood in the name of the plaintiff and according to the defendant, the production of the records would show that there were certain credits standing in the name of the plaintiff that were liable to be adjusted against the claim made by the plaintiff against the defendant. The defendant was, therefore, attempting to fend off the claim made by the plaintiff against the defendant by pointing out to certain other credits alleged to be available to him in the account books of the plaintiffs.

The Court below dismissed the application on a finding that the defendant had not sued for the money alleged to be due by way of

adjustment and therefore he shall not be entitled to cause the production of document.

I may not find the reasoning of the learned Judge to be correct but I would maintain the order of the same for the other reasons. Provisions regarding to Order 11 to Order 13 C.P.C. deal with the discovery, admissions and production of documents. Order 11 details the procedure for application for discovery of documents. It would allow for a party to apply to the Court for an order directing any party to suit to make discovery of the documents which are in possession relating to any matter in question. The Court will pass then an order either allowing for a discovery or refusing to entertain such a plea. It shall be also lawful for a Court at any time during the pendency of the suit to order the production by any party upon oath of such of the document in his possession or power relating to any matter in question and the Court will deal with the documents when produced in such matter as it appears just. Order 11 Rule 21 sets out the consequence of non-compliance with order for discovery with reference to a prayer contained for discovery under Rule 12 or for inspection of documents or to answer interrogatories. If there is a non-compliance, the Court has a power to strike off the defence and to place the party in the same position as if it he had not defended.

It would be noticed that the significance of non-compliance is only for an application filed under Order 11 Rule 3 or for inspection of documents as referred to under Order 11 Rule 15. There is no

particular consequences for striking off defence if non-production of documents which are sought under Order 11 Rule 14 or which could be obtained after issuing notice in Form 7 Appendix 'C' as detailed under order 11 Rule 16 Cr.P.C. The non-production of document as is sought under Order 11 Rule 14 or Rule 16 will only entail drawing some presumptions and inferences and cannot result in rejection of the suit itself for want of prosecution or to have the defence struck off, if he is a defendant.

If in this case, the defendant would seek for an adjustment in requiring the production of some documents which according to him contains some credits and the plaintiff chooses not to produce the documents, the defendant must treat himself to be in an advantageous position, for, it should be possible for him to press for drawing adverse inference against the plaintiff for non-production. I would, therefore, see no particular prejudice caused to the defendant to complain to this Court by means of revision.

The order dismissing the petition is maintained for the reasons stated above and the trial of the suit shall continue in accordance with law. The revision petition is disposed of with above observations.

(K.KANNAN)
JUDGE

17.07.2015
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