

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1130 of 2012 (O&M)

Date of Decision.14.09.2015

M/s Ajay Trading Company, Jind

.....Appellant

Versus

M/s Satish Agriculture Store, Julana Mandi

.....Respondent

Present: Mr. Ajay Kumar Kansal, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J.(ORAL)

1. The second appeal is at the instance of the plaintiff whose suit for recovery of ₹ 3,41,087/- on the basis of certain *bahi* entries came to be dismissed. It was on account of the fact that the plaintiff had not produced the original books and when he was examined in chief through proof affidavit on 17.11.2007, it was adjourned to 02.04.2008 for production of the original documents. On 2.4.2008 also, the original documents had not been produced and it was posted for cross-examination on 23.05.2008 to enable the plaintiff to produce the document before the defendant began his cross-examination. On 23.05.2008, the plaintiff did not come and it appears that the plaintiff's side was closed and it was posted for defendant's examination. The defendant was examined in chief and the plaintiff carried out cross-examination of the defendant also subsequent to the conclusion. The plaintiff wanted himself to be recalled for being cross-examined and an application was filed to that effect for

additional evidence. That application was dismissed and it was brought in challenge by the plaintiff before this Court in revision petition. The revision petition was also dismissed, It, therefore, meant that the Court was not allowing for an additional evidence to be given and the plaintiff had lost his opportunity to give his own evidence. When the suit was ultimately dismissed holding that the plaintiff had not proved his case, it was on the basis of situation where the plaintiff had not produced the original documents on which was suing upon. He had not rendered himself available for being cross-examined and therefore, the examination in chief-examination could not be read into. The Appellate Court affirmed the judgment rejecting a plea that he should have the benefit of being cross-examined for consideration of his evidence.

2. When the appeal was dismissed, the present appeal is filed by the plaintiff to say that the plaintiff never had the full opportunity to tender his evidence and that he was prepared to produce all the original documents. When the plaintiff's side was closed and posted for defendant's side, that was the time when the plaintiff must have filed an application to recall himself and offered himself for being cross-examined and also brought all the original documents. If the plaintiff had let go that opportunity and would allow the defendant to begin his side and cross-examine him also, the plaintiff was literally giving up his evidence. If that could not be effectively done and the Courts below have found that the plaintiff has not proved his case, I do not find any error under peculiar circumstances when the plaintiff abstained himself from offering evidence which was available at that time. Order 7 Rule 14 CPC specifically requires that if the 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. If any such document is not in the possession of the plaintiff, the plaintiff shall state in whose possession or power it is. A document which ought to be produced in Court by the plaintiff when the plaint is presented shall not be without the leave of the Court for being received in evidence on his behalf at the hearing of the suit. These provisions render mandatory the duty to produce the document which is sued upon by the plaintiff along with the plaint or it cannot be brought subsequently unless the Court grants leave. In this case, there was simply no justification for the plaintiff who had begun his chief examination on 17.11.2007 to have not furnished the document on the day when the proof affidavit was filed and when he had allowed himself a long time of five months for the next date of hearing, he ought to have produced the document at least at that time. His illness on 21.05.2008 has nothing to do with the non production of the important documents till it had arrived to the stage of cross-examination on 23.05.2008.

3. I do not find that the plaintiff's conduct would enable him to secure a decree which was denied to him by the two Courts below. I confirm the judgments passed by the Courts below and dismiss the second appeal as involving no substantial question of law for consideration.

(K. KANNAN)
JUDGE

September 14, 2015

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