

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 216 of 2016**

Order Reserved on : 27.7.2016

Order Passed on : 05.10.2016

- Lalwani & Sons Through His Proprietor- Kalyan Das Lalwani, Aged About 61 Years, S/o Late Ruchandmal Lalwani, R/o Nehru Nagar Main Road, Bilaspur, Tahsil & District Bilaspur (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through District Magistrate, District Bilaspur (Chhattisgarh)

Firm Chima Bricks Through His Partners :-

2. Jagveer Singh Chima, S/o Sohan Singh Chima, Aged About 35 Years C/o Chima Local Carrier (Shankar Nagar Raipur Road) Mahasamund, Tahsil & District Mahasamund (Chhattisgarh)
3. Gurumukh Singh Chima, S/o Gurucharan Singh Chima, Aged About 42 Years C/o Chima Local Carrier, Goyal Complex Shop No. 09, Minocha Petrol Pump Telibandha (Mahasamund Road) Raipur, Tahsil & District Raipur (Chhattisgarh)
4. Jaspal Singh Chima, S/o Sohan Singh Chima, Aged About 40 Years C/o Chima Local Carrier (Shankar Nagar Raipur Road) Mahasamund, Tahsil & District Mahasamund (Chhattisgarh)
5. Jagroop Singh Chima, S/o Sohan Singh Chima, Aged About 40 Years C/o Chima Local Carrier (Shankar Nagar Raipur Road) Mahashamund, Tahsil & District Mahashamund (Chhattisgarh)

---- Respondent

For Petitioner : Shri Mateen Siddiqui, Advocate.
 For Respondent/State : Shri Avinash Singh, Panel Lawyer.
 For Respondents 2 to 5 : Shri Manoj Paranjpe, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**C A V Order**

1. In this petition under Article 227 of the Constitution of India, the petitioner/plaintiff would assail the legality and validity of the order passed by the trial Court refusing to allow his application under Order 7 Rule 14 (3) CPC seeking leave to submit documents.
2. The plaintiff has filed the present suit on 9.11.2012 seeking recovery of Rs.21,18,500/- along with interest @ 18% per annum on the averments that the plaintiff is a Coal Trader whereas the defendants are transporter and are also manufacturers of bricks in bulk quantity for which they need coal as raw material. The defendants purchased 2793.270 MT of coal from the plaintiff on credit. The purchases were made on different dates as detailed in Schedule-I. The purchase made on 24.3.2012 vide DO No.121384 weighing 500 MT is mentioned in Schedule-II with the plaint. For the purchase made in Schedule-I, the defendants paid only Rs.58,05,000/-. Thus a sum of Rs.20,30,046/- remained unpaid. For the purchase made in the year 2012-13, the defendants paid Rs.17,14,700/-. Thus, in all, as against purchase of Rs.93,64,901/-, the defendants paid Rs.75,19,700/- and the balance amount of Rs.18,45,201/- remained unpaid. Since despite exchange of legal notice and reply the amount remained unpaid, the plaintiff filed a suit for recovery. The defendants denied the plaint averments and are contesting the suit.

3. When the suit is fixed for evidence, the plaintiff examined PW-1 Kalyan Das Lalwani on 16.1.2015. On 25.1.2016, the plaintiff moved the subject application under Order 7 Rule 14 (3) of the CPC seeking leave to submit documents for reliance during trial on the ground that the subject documents in the nature of cash/credit memo, audit report pertaining to subject transaction are necessary to be filed because the same could not be produced as it was not felt necessary upon reading of the defendants' reply to the legal notice. However, since PW-1 Kalyan Das Lalwani has been cross-examined on these aspects, the documents appear to be necessary. It was also stated in the application that the documents were in possession of the plaintiff from the very beginning but his lawyer did not advise him to produce the same. The defendants objected to the introduction of documents on the ground that they are highly belated and have been so filed to fill up the lacunae in its case.
4. The trial Court has refused to permit production of documents holding that there is no pleading in the plaint about these documents and even otherwise, they were in possession of the plaintiff, but sufficient reason has not been assigned for non-production at the appropriate stage, the same cannot be allowed.
5. Referring to the judgment in the matter of **Kumar Gopika Raman Roy Vs. Atal Singh and Others** reported in AIR 1929 PC 99, learned counsel for the petitioner would submit that the documents should have been permitted to be taken on record.

6. Per contra, learned counsel for the respondents would submit that the documents are not necessary for adjudication of the suit and even otherwise, the documents are highly belated. Reliance is placed by the respondents on judgment in the matter of **Bagai Construction through its proprietor Lalit Bagai Vs. Gupta Building Material Store** reported in (2013) 14 SCC 1.
7. In **Kumar Gopika Raman** (Supra), the Privy Council has held that production of documents which were not produced as per requirement under Order 7 CPC only comes into operation when the documents on which the parties rely should have been, but were not, produced at the first hearing. It is held therein that when leave to produce the documents is applied at later stage it should not ordinarily be refused when the documents are official record of undoubted authenticity which may assist the Court to decide rightly the issue before it.
8. In **Bagai Construction** (Supra), the Supreme Court referred to its earlier decisions in matters of **Vadiraj Naggappa Vernekar Vs. Sharadchandra Prabhakar Gogate** {(2009) 4 SCC 410} and **K.K. Velusamy Vs. N. Palanisamy** {(2011) 11 SCC 275} to reiterate that in the interest of justice and to prevent abuse of process of the Court, the trial Court is free to consider whether it was necessary to reopen the evidence and if so, in what manner and to what extent.
9. In the case at hand, the plaintiff had served a legal notice before filing

of the suit to which the defendants replied but did not dispute that there were transactions between the parties, however, their reply was to the effect that the amounts have already been paid. It was only when the plaintiff's witness was cross-examined that he has not produced the original record on the basis of which the schedule attached with the plaint has been prepared or audit report or income tax return, the plaintiff sought leave to produce the documents.

10. In the considered opinion of this Court, when the defendants are not denying the transaction but the plea is only to the effect that the amounts have been paid, cash/credit memo, audit report and ledger accounts are relevant and germane for just decision of the case. In the absence of documents, the trial Court may not reach to the correct conclusion and the plaintiff may suffer irreparable loss.
11. A reading of the order sheet would indicate that the matter is fixed for recording the defendants' evidence meaning thereby that the defendants have not yet begun their evidence. Therefore, even if the plaintiff is required to recall his witness due to introduction of additional documents, the defendants shall not be prejudiced.
12. In course of hearing, the petitioner's counsel submitted that if the Court finds that there is delay in introducing the documents, the other side may be compensated by imposing the cost.
13. In view of the afore-stated reasons as also the submission of learned

counsel for the petitioner regarding imposition of cost, the Writ Petition is allowed. Leave is granted to the plaintiff to file additional documents as mentioned in the application under Order 7 Rule 14(3) CPC subject, however, to payment of cost of Rs.10,000/- to the defendants.

Sd/-
Judge
(Prashant Kumar Mishra)

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