

CR-5765 of 2016(O&M)

-1-

In the High Court of Punjab and Haryana at Chandigarh

CR-5765 of 2016(O&M)

Date of Decision:26.10.2016

Narender

---Petitioner

vs.

Vikram Electric Equipment Private Limited

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.N.D.Achint, Advocate
for the petitioner

Rekha Mittal, J.

The present petition lays challenge to order dated 23.5.2016 passed by the Additional Civil Judge (Senior Division), Gurgaon whereby two applications filed under Order 8 Rule 1A(3) of the Code of Civil Procedure (in short "CPC"), one dated 31.8.2012 filed by the respondent/plaintiff and the other dated 18.12.2013 filed by the petitioner/defendant have been decided by a common order.

The respondent-plaintiff filed an application for restraining the

defendant/petitioner from exhibiting the documents mentioned in the application whereas the application filed by the petitioner/defendant is for grant of leave to produce the documents at the stage of adducing evidence by the defendant/petitioner.

Counsel for the petitioner has submitted that the mere fact that documents sought to be produced by the petitioner/defendant during course of evidence were not produced with the pleadings or entered in the list of reliance is not sufficient to reject claim of the petitioner to produce the documents at the time of evidence though the petitioner may be put to terms for his failure to produce the documents or enter them in a list at an appropriate stage of the proceedings. In support of his contention, he has relied upon judgment of this Court ***Sewa Singh vs. M/s Ganpati Trading Company 2015(1) Civil Court Cases 430***. Further reliance has been placed upon judgment of Hon'ble the Supreme Court of India ***Kailash vs. Nanhku and others AIR 2005 Supreme Court 2441*** and judgment of Gujarat High Court ***Jindal Saw Limited vs. Saubhagyachand Shambulal Vora 2006 AIR (Gujarat) 1000***. In addition, it is submitted that in case the petitioner is not permitted to produce and prove documents Exs. D.1 to D.21, detailed in para 7 of the petition which were tendered into evidence alongwith affidavit

of the petitioner filed by way of examination in chief before the trial court, a serious prejudice would be caused to the petitioner to defend the suit filed by the respondent/plaintiff for recovery of Rs. 28 lakhs (principal) and Rs. 8,96,000/- (interest) alongwith future interest at the rate of 12% per annum on the basis of agreement to sell dated 26.7.2006 in respect of land, detailed in para 2 of the plaint (Annexure P-1).

I have heard counsel for the petitioner, perused the paper book, written statement filed by the petitioner and the order impugned.

Before advertng to the submissions made by counsel for the petitioner, it would be appropriate to deal with the judgments cited by counsel to assail the impugned order.

In **Sewa Singh's case (supra)**, M/s Ganpati Trading Company filed a suit for recovery based on account books viz Rokar Bahi, Khata and Form-J maintained in the daily course of business. The respondent/plaintiff, during the course of leading evidence, filed an application for grant of leave to place on record copies of the cash book, khata entries alongwith form-J and punjabi translation thereof that was allowed by the trial court vide order impugned in the revision petition preferred by Sewa Singh defendant. This Court, on consideration of the

provisions of Order 7 Rule 14 CPC and Order 8 Rule 1-A and Order 13 Rule 1 CPC concluded that a conjoint reading of Sub Rule 2 of Rule 14 of Order 7, Sub Rule (3) of Order 8 as also Rule 1-A of Order 8 CPC makes it clear that any document which though should have been produced alongwith the pleadings is not so produced, may be allowed by the Court to be produced at any subsequent stage if sufficient reason is shown by erring party for non-production of the same and alongwith its pleadings. It has further been held that in the present case, Rokad Bahi, Khata alongwith Form-J and translation in Gurmukhi script, original of which are sought to be produced and copies whereof are already available with the pleadings of the parties, could be filed at a later stage with the leave of the Court. The judgment of Hon'ble the Supreme Court in ***Kailash's case (supra)*** pertains to the provisions of Order 8 Rule 1 that spells out the right of the respondent to file the written statement within a period of 90 days and competence of the Court to extend that period to another 30 days in exercise of its discretion. However, the judgment has nothing to do with the controversy raised in the present case. Similarly, the judgment passed by Gujarat High Court pertains to Order 8 Rule 1 CPC and therefore, has no bearing on the controversy involved in the present case.

Now reverting to the facts of the case at hand, the trial court on a detailed consideration of the averments set up in the written statement particularly para 8 thereof, reproduced verbatim in para 4 of the impugned order as well as paras 2 and 3 of the affidavit tendered into evidence containing reference to the documents exhibit D1 to D 21, the trial court held that comparative perusal of the *ibid* paras goes to show that the documents mentioned by the defendants in the affidavit are totally alien to the written statement as there was not even a whisper about the documents in the written statement. Further held that it can be conclusively said that the documents mentioned in the affidavit were neither the basis of defence nor the same were relied upon by the defendant, therefore, the Court has no discretion to grant leave for production of these documents in exercise of jurisdiction under Order 8 Rule 1-A(3) read with Rule 1-A(1) thereof.

Counsel for the petitioner is not in a position to assail these factual findings recorded by the trial court. This court has examined the averments raised in the written statement as well as the documents sought to be produced and proved during the course of evidence. The findings recorded by the trial court that the documents Exs. D.1 to D.21 do not find reference in the written statement get substantiated from the pleadings of the

petitioner particularly para 8 of the written statement (Annexure P-2). To be fair to the petitioner, he in para 8 has averred with regard to his presence on 21.2.2007 for execution and registration of the sale deed and his having got his presence marked in the office of Sub Registrar, Gurgaon but there is no averment as to how he got his presence marked much less that he executed an affidavit and got it attested from an authority. Counsel for the petitioner has failed to cite any law or a precedent that permits a party to adduce any evidence beyond pleadings much less produce and prove series of documents that do not find reference in the written statement. In this view of the matter, I do not find any error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

26.10.2016
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No