

HON'BLE SRI JUSTICE S.V.BHATT

C.R.P. No.1699 OF 2017

ORDER:

Heard Mr.C.Sva Sanker for petitioner.

The plaintiff in O.S No.341 of 2007 in the Court of Junior Civil Judge, Allagadda, is the revision petitioner. The revision is directed against the order dated 21.02.2017 in I.A. No.908 of 2016 refusing to reopen the suit for adducing further evidence. The affidavit filed along with the prayer for reopening refers to the posting of suit for argument on 16.11.2016. One of the listed documents is misplaced and could not file the same at the time of evidence adduced by the petitioner. Non-filing of document is neither wilful nor negligent. The document now sought to be filed is very much necessary and material for the case pleaded by the petitioner. The trial Court after taking note of the conduct of petitioner herein and also that the affidavit filed does not disclose any reasons, dismissed the I.A. Hence the revision.

Mr.Sva Sanker has substantially reiterated the allegations in the affidavit which did not find favour with the trial Court. The Apex Court in BAGAI CONSTRUCTION V. GUPTA BUILDING MATERIAL SOURCES<sup>1</sup> on the reopening of suits and how the discretion has to be exercised by the Courts has held as follows:

“If we apply the principles enunciated in the above case and the limitation as explained with regard to the application under Order XVIII Rule 17, the applications filed by the plaintiff have to be rejected. However, learned counsel for the respondent by placing heavy reliance on a

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<sup>1</sup> (2013) 14 SCC 1

subsequent decision, namely, [K.K. Velusamy vs. N. Palanisamy](#), (2011) 11 SCC 275, submitted that with the aid of Section 151 CPC, the plaintiff may be given an opportunity to put additional evidence and to recall PW-1 to prove those documents and if need arises other side may be compensated. According to him, since the High Court has adopted the said course, there is no need to interfere with the same.

In Velusamy even after considering the principles laid down in Vadiraj Naggappa Vernekar and taking note of Section 151 CPC, this Court concluded:

“22..... in the interests of justice and to prevent abuse of the 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”.

Further, it is observed that the evidence should be permitted in exercise of its power under Section 151 of the Code. The following principles laid down in that case are relevant:

“We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.

With these principles, let us consider the merits of the case in hand.

The perusal of the materials placed by the plaintiff which are intended to be marked as bills have already been mentioned by the plaintiff in its statement of account but the original bills have not been placed on record by the plaintiff till the date of filing of such application. It is further seen that during the entire trial, those documents have remained in exclusive possession of the plaintiff but for the reasons known to it, still the plaintiff has not placed these bills on record. In such circumstance, as rightly observed by the trial Court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of judgment, we are of the view that the plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him. As rightly observed by the trial Court, there is no acceptable reason or cause which has been shown by the plaintiff as to why these documents were not placed on record by the plaintiff during the entire trial. Unfortunately, the High Court taking note of the words “at any stage” occurring in Order XVIII Rule 17 casually set aside the order of the trial Court, allowed those applications and permitted the plaintiff to place on record certain bills and also granted permission to recall PW-1 to prove those bills. Though power under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of the court and Court can exercise its discretion to permit reopening of evidence or recalling of witness for further examination/cross-examination after evidence led by the parties, in the light of the information as shown in the order of the trial Court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 of CPC, the plaintiff cannot be permitted.

After change of various provisions by way of amendment in the CPC, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court

has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial Court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still plaintiff has not placed those bills on record. It further shows that final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 CPC”.

Having regard to the reasons of the trial Court recorded in the order under revision and also the view expressed by the Apex Court, I am satisfied that no ground is made out for interfering with the order under revision. Revision fails and accordingly dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT,J

Date:04.04.2017  
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