IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.04.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(PD)No.3466 of 2013
and M.P.No.1 of 2013

Kishore B. Jethwani .. Petitioner

versus

1.Raju M.Jethwani,
Carrying on Business under
the name and style of
'Tirupur House',
Old No.44, New No.78,
Shroff Orchards, New Avadi Road,
Chennai - 600 010.

2.Barkha .. Respondents

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the order dated 04.07.2013 made in I.A.No.15649 of 2012 in O.S.No.5 of 2006 on the file of the learned Assistant Judge, City Civil Court, Chennai.

For Petitioner : Dr.C.Ravichandran
For Respondent No.1 : Mr.Manoj Sreevatsan
For Respondent No.2 : Vacated (notice unserved)

ORDER

Aggrieved over the order of the trial Court in dismissing the Application to issue Subpoena to the Income Tax Department as well as the Sales Tax Department to produce the relevant records of the years 2000-2001, 2001-2002, 2002-2003 and 2003-2004, in respect of TNGST No.1581590.

2. The petitioner herein as the plaintiff has filed suit in O.S.No.5 of 2006 for recovery of money, being the amount due and payable by the defendants in respect of dissolution of the partnership business. The evidence let out by P.W.1 was over and the first defendant being cross examined as D.W.1 and at this stage, an Application has been taken out on the ground that the income tax returns as well as sales tax returns are relevant to prove the case of the petitioner.

3. The learned counsel appearing for the revision petitioner submitted that the documents are relevant to prove the case of the petitioner. Whereas, the learned counsel appearing for the first respondent submitted that the Application is filed only to delay the proceedings, when the case is transferred to the regular Court after 56 hearings the defendant was not cross examined, the matter has been dragged on for somehow or other wherein the defence has produced all the certified copy of the documents and several things in his evidence. Only after coming to know about the facts that the plaintiff has no case, the present Application has been filed by the revision petitioner.

4. I have perused the orders of the trial Court and also the materials.

5. As stated above, the suit is filed for recovery of money. In both sides, examination was completed. It is specifically mentioned that after 56 hearings, the matter has been adjourned for cross examination of D.W.1 and he has produced all the documents only to non-suit the above, this Application has been filed.

6. Though parties are entitled to summon the document to establish their substantial right, on perusal of the records would clearly indicate that even for cross examination of D.W.1 more than 56 hearings the matter has been adjourned and thereafter, when the defendants adduced the evidence to establish their case, at this stage the petitioner sought to produce some documents merely on the ground that the defendants has stated in the cross examination that they are not in possession of the alleged documents. In the absence of any indication as to manner, in which, those documents are relevant to prove his case, as a matter of right those documents cannot be summoned and it is for the plaintiff to establish his case for recovery of money, in fact, he ought to have produced the income tax returns and other documents to substantiate his claim, wherein he seeks income tax returns of the defendants.

7. The learned counsel appearing for the revision petitioner relied upon the judgment of this Court in ***INDO INTERNATIONAL LTD. vs. CONTINENTAL CARRIERS PRIVATE LTD.*** reported in ***(2004 (3) CTC 353)*** wherein it has been held that the plaintiff is enjoined with burden to prove his claim and he is entitled to summon such documents as they are relevant. Considering the fact that the document has disclosed the defendants as 'sundry creditors' on that situation the Court has directed to produce the income tax returns, wherein in this case the facts are entirely different, it is only for recovery of money, the plaintiff has to prove his case on his own document and he cannot take a shelter under the pretext that he is entitled summons any document. Hence, I do not find any error or illegality in the order passed by the trial Court.

8. In the result, the Civil Revision Petition is dismissed. The trial Court is directed to dispose of the suit within a period of two months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

25.04.2019

Speaking Order/Non Speaking Order
Index : Yes / No
Internet : Yes

sri

To

The Assistant Judge,
City Civil Court, Chennai.

N.SATHISH KUMAR, J.,
sri

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