IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
CMPMO No.358 of 2020
Decided on :02.11.2020

Saico Health Care Pvt. Ltd. ….Petitioner
Versus
M/s Konark Herbal …..Respondent

Coram:
The Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting?_____

For the petitioner : Mr. Suneet Goel, Advocate.

Respondent exparte.

Justice Sandeep Sharma, Judge (Oral)

(**Through Video Conferencing)**

Instant petition filed under Article 227 of the Constitution of India, lays challenge to order dated 2nd July, 2020, passed by learned Civil Judge, Nahan, District Sirmour in CMA No. 452 of 2020, filed in Civil Suit No.9/1/2017, whereby, an application, under Order 7, Rule 14 of CPC, having been filed by respondent-plaintiff seeking therein permission to place on record the additional documents, came to be allowed.

2. Briefly, facts as emerge from the record are that the respondent (hereinafter referred to as 'plaintiff') filed a suit for recovery of Rs. 2,74,493.56, against the petitioner-defendant (hereinafter referred to as 'defendant') on account of sale of herbal products. Since, defendant failed to pay the aforesaid amount,

plaintiff was compelled to approach the learned Court below by way of filing a suit referred hereinabove.

3. Para-3 of the plaint, reveals that as per demand/order placed by the defendant for the purchase of herbal products, the plaintiff supplied the products from its Industrial Unit at Village Moginand to the defendant, as per invoices and a sum of Rs. 2,08,841.56 is due as principal amount against the defendant. Detail of invoices showing the sale of products and amount are though stated to be attached with the plaint, but record reveals that same were not on record and as such, application under Order 7 Rule 14 of CPC, came to be filed at the behest of plaintiff, seeking therein permission to place on record aforesaid documents.

4. The defendant by way of filing reply, refuted the claim of the plaintiff and averred in the written statement that as per records the plaintiff has to pay a sum of Rs. 17,359/- to defendant.

5. Record reveals that suit was filed in January, 2017 and after completion of pleadings, issues were framed on 18.4.2018 as is evident from (Annexure P-3). Zimni orders placed on record, clearly reveal that matter repeatedly came to be adjourned at the behest of plaintiff for recording of evidence. On 22.11.2018, an affidavit in evidence came to be tendered at the behest of one of the plaintiff's witness and on 14th January, 2019, the matter again came to be listed for cross-examination of aforesaid plaintiff's witness, but

on that date, none of the plaintiff's witness came present and learned counsel representing the plaintiff sought time from the Court to file an application. However, on 18.03.2019, 08.04.2019 and 04.05.2019, case again came to be adjourned on the request of plaintiff, enabling it to file application. On 4.6.2019, an application under Order 7 Rule 14 CPC, as has been taken note of above, came to be filed at the behest of plaintiff, seeking therein permission to place on record statement of accounts and invoices (Annexure P-4). Though, prayer made in the aforesaid application came to be contested at the behest of respondent (Annexure P-5), who stated in his reply that once existence of documents sought to be adduced on record by way of instant application, was very much in the knowledge of the plaintiff, at the time of filing of the suit and as such, same cannot be taken on record at this stage, that too, without there being any explanation rendered on record for not placing the same at the time of filing the suit.

6. However, facts remain that Court below vide order dated 2nd July, 2020 (Annexure P-6) proceeded to allow the application and permitted plaintiff to place on record invoices and statement of accounts. In the aforesaid background, respondent-defendant has approached this Court in the instant proceedings, praying therein to set aside the aforesaid impugned order.

7. Before adverting to the factual matrix of the case, it may be noticed that though notices were issued to the respondent in the instant proceedings, but despite service none has come present on its behalf and as such, it came to be proceeded against *ex parte* on 29.10.2020.

8. Having heard learned counsel representing the petitioner-defendant and perused the material available on record, this Court finds substantial force in the submissions made by Mr. Suneet Goel, learned counsel, representing the petitioner-defendant that at every stage effort has been made by respondent-plaintiff to delay the trial. Similarly, having carefully perused the averments contained in the plaint (Annexure P-2), this Court finds that though, in para-3 of the plaint, respondent-plaintiff has averred that detail of invoices showing the sale of products and amount are attached, but same never came to be form part of the pleadings.

9. Since, suit at hand is for recovery of amount due on account of sale and purchase of herbal products, it is/was incumbent on plaintiff to place on record the material with regard to order placed by respondent for sale and purchase of herbal products as well as payments, if any, received on account of aforesaid transaction. Written statement filed on behalf of defendant clearly reveals that claim of the respondent-plaintiff has been seriously refuted by defendant, who has categorically stated in written

statement that a sum of Rs. 17,359/-, is recoverable from respondent-plaintiff, but still respondent-plaintiff chose to remain silent, till the time evidence commenced in the case. As has been taken note hereinabove, issues were framed on 18.4.2019, whereafter, repeatedly matter came to be adjourned for recording the evidence of plaintiff's witnesses at the behest of learned counsel representing the plaintiff, but there is nothing to suggest that effort, if any, ever came to be made on behalf of the plaintiff to place on record documents now sought to be adduced on record. Even, after framing of issues, by which time, pleadings adduced on record by respective parties, were in the knowledge of the parties to the lis, no efforts, if any, ever came to be made at the behest of respondent-plaintiff to move an application, seeking therein permission to place on record additional documents, if any. Application which came to be filed on 4.6.2019, i.e. after one year of framing of issues, otherwise, nowhere discloses reasons, if any, for not placing documents now intended to be placed on record, which were admittedly in the presence of the plaintiff at the time of filing of the suit for recovery. Though, there is mention with regard to invoices of sale of herbal products in the body of plaint (para-3 of the plaint), but definitely, there is no mention, if any, with regard to statement of accounts in the plaint, which were essentially required to be pleaded to prove the liability, if any, of petitioner-defendant, hence Mr. Suneet

Goel, learned counsel, representing the petitioner, is right in contending that once there is/was no pleading/mention, if any, with regard to statement of accounts, prayer made on behalf of respondent-plaintiff to place on record statement of accounts ought not have been accepted by the learned Court below especially, when there is no plausible reasoning rendered on record for not placing the same at the time of filing of the suit. Though, learned Court below while passing impugned order has taken note of the reply filed by the petitioner-defendant, but interestingly while passing the final order has failed to deal with the same. Rather Court below has simply stated that if documents sought to be placed on record in the instant application, are permitted to be taken on record, petitioner-defendant would get ample opportunity to rebut the same and cross-examine the witnesses with regard to the said documents.

10. True it is that once the documents intended to be produced by way of additional evidence are ordered to be taken on record, opposite party would get an opportunity to rebut the same, but, once, there is ample material available on record suggestive of the fact that at every stage, efforts came to be made at the behest of respondent-plaintiff to delay the trial, Court below should have not allowed the prayer of the respondent-plaintiff to place on record the documents which otherwise, never came to be mentioned in the pleadings, that too at this belated stage.

11. Needless to say that conduct of parties is of utmost importance, especially, when some discretionary powers are to be exercised. It is quite apparent from the record that respondent-plaintiff was not diligent enough while pursuing its case, which fact is otherwise evident from the observations made by the learned Court below while passing the impugned order. The learned Court below has categorically recorded that a suit came to be filed in the year 2017, but documents were not filed till the matter was listed for evidence and as such, it can be concluded that respondent-plaintiff was not pursuing the case with minute care. Interestingly, Court below though recorded that some delay has been caused due to filing of the application, yet, permitted plaintiff to lead best possible evidence in respect of its case to the disadvantage of the defendant. No doubt, whenever technicalities are pitted against substantial justice, it is substantial justice which would prevail, but as has been observed above, conduct of party, seeking indulgence is of great significance. When it is clearly appears from the record that an application has been filed with a view to delay the trial and to fill up the lacunas, Court should not have shown any indulgence.

12. Leaving everything aside, perusal of plaint clearly reveals that there are no pleadings, if any, with regard to statement of accounts, and as such, learned Court below ought not have

permitted the respondent-plaintiff to place on record statement of accounts.

13. Consequently, in view of the above, this Court finds merit in the present petition and same is accordingly partly allowed. Impugned order dated 2.7.2020, is quashed and set aside, in as much as, it permits respondent-plaintiff to place on record statement of accounts. Cost awarded by learned Court below while permitting the respondent-plaintiff to place on record the documents, i.e. invoices, is also ordered to be enhanced from Rs. 300/- to Rs. 5000/- payable to petitioner-defendant, who has been unnecessarily compelled to approach this Court by way of instant proceedings.

14. Consequently, in view of the above, present petition is disposed of, so also, pending application(s), if any.

(Sandeep Sharma)
Judge

November 02, 2020
(reena)