

IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

THE HON'BLE JUSTICE Kesang Doma Bhutia.

C.O. No. 1412 of 2021

Twilight Properties Pvt. Ltd. & Anr.

VS.

Supratik Bhattacharjee & Ors.

For the Petitioners : Ms. Fereshte Sethna,
Mr. Satadeep Bhattacharyya,
Mr. Awani Kumar Roy,
Mr. Surajit Biswas,
Mr. Arijeet Bera,

For the Opposite Party
Nos. 1 to 3 : Mr. Sakya Sen,
Mr. Soumik Sarkar,

For the Opposite Party
No. 4 : Mr. Sabyasachi Chowdhury,
Mr. Amit Meharia,
Ms. Paramita Banerjee,

For the Opposite Party
Nos. 5 to 10 : Mr. D. Roy Chowdhury,
Ms. Atasi Saha,

Hearing concluded on : 20.01.2022

Judgment on : 08.02.2022

Kesang Doma Bhutia, J:- The plaintiffs/petitioners have filed the present application under Article 227 of the Constitution of India, challenging the order passed by the learned Civil Judge (Senior Division), 2nd Court, Alipore, in Title Suit No. 10216 of 2011 on 20.03.2021 and whereby the learned Court below was pleased to recast issues in compliance of the direction of the Hon'ble Co-ordinate bench of this Hon'ble High Court passed in C.O. No. 4188 of 2018 on 13.11.2019 and kept in abeyance the plaintiffs' application under Order 11 Rule 14 of the Civil Procedure Code.

The facts necessary for determination of the present revisional application in gist is that there exist a dispute between the parties in respect of a Development Project of a property measuring 3 bigas 12 cottahs 7 chittacks & 18 sq.ft. situated at 3/1 Sunny Park, Ballygunge, Kolkata-700019. Such property was originally owned by one Josna Ghosal. The said Josna Ghosal during his life time relinquished the suit property in favour of his grandson Jitendra Kumar Ghosal by executing a deed of transfer on 6th July, 1971. Jitendra Kumar Ghosal was a NRI (Non Resident Indian) and married to an American lady named Mary Ann Ghosal. The deceased defendant no. 1 Romola Bhattacharjee was the own sister of Jitendra Kumar Ghosal.

Jitendra Kumar Ghosal died sometime in the month of July, 1987. That during his life time he bequeathed the disputed property in favour of his wife Mary Ann Ghosal by executing a will.

It appears from the record that in order to develop the property of late Jitendra Kumar Ghosal 50/50 agreement was executed between the Plaintiff

no. 2 and Defendant no. 2 the family attorney of Ghosals' on certain terms and conditions sometime in the year 1987. Consequently a written agreement was also executed to that effect in between the plaintiff no. 1 and deceased defendant no. 1, the subsequent owner of the property on 19th October 1994.

In pursuant to such agreement with owner /deceased defendant no.1, the Plaintiff no.2 managed to get possession of a portion of the property under the occupation of Hongkong and Shanghai Banking Corporation (HSBC). He made necessary arrangement for getting the property transferred in the name of deceased defendant no. 1 by Mary Ann Ghosal by executing a deed of gift. That he engaged different architectural firms for preparation of plans for construction of high-end multi-storied structures as well as a bungalow for defendant no. 1 on disputed property. In that way plaintiff had spent more than 51.88 lakh on various accounts for the proposed project from the year 1987. In the meantime the plaintiffs have shifted its base to Pune. Sometime in the month of May 2011 they came to know about deceased defendant no. 1 executing a fresh development agreement with defendant no. 3 to 8 and execution of a deed of conveyance thereof on 27th May, 2011.

Therefore, by filling suit no. 10216 of 2011 for Specific Performance of Contract, the plaintiffs have alleged that in the agreement dated 1994 executed between plaintiffs and deceased defendant no. 1 there subsist negative covenant. The deceased defendant no. 1 who had also received Rupees five lakh from the plaintiffs in pursuant to such agreement cannot

execute any conveyance in respect of suit property in favour of defendant no. 3 to 8.

Subsequently, in view of amendment in the Specific Relief Act, the plaintiffs have sought for an alternative relief for damage by filing an amendment petition and which was initially rejected by learned Trial Court, but later the same was allowed by Hon'ble Co-ordinate bench of this Hon'ble High Court in C.O. No. 3257 of 2018 on 13.11.2019 and with a direction to the plaintiffs and defendants to file amended plaint and additional written statement within time fixed. While disposing C.O. No. 4188 of 2018 on the same day, the trial Court was directed to recast the issue which has already been framed in the light of the amendment in the plaint or to formulate additional issue. In the event either of the two course are inconvenient, the trial Court would be at liberty to strike out the issue already framed and frame fresh issue in the light of the amended plaint and as well as the additional written statement.

During the pendency of the above two C.Os., the plaintiffs had filed an application under Order 11 Rule 14 Civil Procedure Code read with Section 151 Civil Procedure Code before the learned court below with a prayer that defendants be directed to produce the documents lying in their custody as per the list annexed thereto on 03.01.2019.

However, the learned court below in due compliance of direction given to it by Hon'ble coordinate bench of this Hon'ble High Court in the C.O. 4118 of 2018 on 13.11.2019 was pleased to recast the issues, but kept the plaintiffs' application under Order 11 Rule 14 of the Civil Procedure Code in

abeyance with the observation that such application would be taken into consideration if the situation arises during trial.

It has been invariably contended by the learned Senior Counsel for the plaintiffs that it is mandatory for the learned Trial Court to call for the production of those documents lying in the custody of the defendants before framing additional issues or recasting of issues which are already there on record as contents of those documents may be vital and material for determination of the actual dispute between the parties and issue may require to be framed on the basis of contents of those documents and how it effect the interest of the parties to the suit. That without those vital/relevant issues on record it may not be possible on the part of the plaintiffs to lead evidence at the time of trial and it may cause irreparable loss and prejudice to the plaintiffs. That judges are expected to examine the pleadings and documents that would come on record before framing of issues. If those documents happen to be the foundation and subject matter of the dispute and without framing issue on such documents parties would be deprived of their right to get themselves prepared in advance for proving those documents in support of their case or to destroy their opponent's case at the time of trial. Therefore the learned counsel for the petitioner submits the order impugned is bad in law and liable to be set aside.

The learned Counsel in support of her contention referred *Maria Margarida Sequeria Fernandes & Ors. Vs. Erasmo Jack de Sequeria* reported in *AIR 2012 (SC) 1727* and to an order passed by the Hon'ble coordinate

bench of this Court in C.O. No. 4083 of 2017 in between *Kamaljeet Gupta Vs Freserinus Kabi Oncology Ltd. & Orson* 14.02.2019.

Per contra the opposite parties urged the settlements of issues are governed by order 14 Rule 1 of Civil Procedure Code and which depend on facts alleged in the plaint and those denied in the written statement. Order 14 Rule 1 Civil Procedure Code does not stipulate requirement of any additional documents for the purpose of framing of issues. Necessary pleadings have already been filed by the respective parties that learned Court below has already taken into consideration the facts which have been brought by way of amendment in the plaint and in the additional written statement filed thereto and in compliance of the Hon'ble High Court order passed in C.O. No. 4188 of 2018 and recast the issues. The documents which plaintiffs want production are already relied upon in the plaint and production of the documents under Order 11 rule 14 of Civil Procedure Code has no bearing on framing of issues.

In view of such submission made by learned counsels for the parties, the only issue which requires determination in the present revisional application is whether the Court below is bound to dispose of application under Order 11 Rule 14 of Civil Procedure Code prior to recasting of the issues.

In order to decide such issue it is necessary to discuss the purpose and object of Procedural law. Code of Civil Procedure clearly provides the legal steps which an individual or any person or persons or legal entity required to comply when seeking a particular legal right against an individual or corporation in the court of law. Further, procedural law controls the way a

court case precedes and to ensure due process is ensured. The court needs to conform to the standard set up by procedural law during civil proceeding. Generally procedural law deals with and lays down ways and means by which substantive law can be enforced. The observance of procedural law is required before trial.

Normally documents are produced and inspection is given after the pleadings are concluded and before issues are framed. In the present case such stages were already completed and case was ready for trial when the plaintiffs had come with a petition for amendment of plaint. That before final disposal of the amendment petition by the Hon'ble High Court, the plaintiffs have come up with another application under Order 11 Rule 14 CPC for production of documents mentioned therein by the defendants.

Initially the plaintiffs have filed the suit only for specific performance of contract which they had with the deceased defendant no.1 in the year 1994 for development of the disputed property, but after amendment in Specific Relief Act, in 2018 the plaintiffs by amending plaint have sought alternative remedy for damage. The plaintiffs with the change in the relief sought for and to prove their claim for damage have filed an application under Order 11 Rule 14 CPC asking defendants to produce documents mentioned therein which are lying in their custody .

Order 11 Rule 14 CPC read as follows;- It shall be lawful for the Court, at any time during the pendency of any suit, to order production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right:

and the court may deal with such documents, when produced, in such manner as shall appear just.

On plain reading of the provision of Order 11 Rule 14 of CPC, it appears any party to the suit at any time during the pendency of suit can pray for production of the documents in possession of his opponent relating to any matter in question in such suit as the court think right.

Therefore, this court is of view with the amendment in plaint and with the change in the relief sought for the plaintiff can seek production of those documents which are in custody of the defendants to prove their alternative relief/remedy in the form of damage. For the purpose of obtaining clarity regarding the actual controversy in suit and in order to frame correct issue of facts and law, the learned Court below ought to have directed the defendants to produce those documents mentioned in the application of the plaintiffs and which are in their custody to enable to obtain material facts or information for the purpose of elicitation of additional materials for better preparation of a case before it is brought to trial. The learned court below ought to have framed additional issue or recast the issue after taking into consideration the contents of those documents alleged to be material in order to prove the plaintiffs' alternative remedy for damage.

No doubt, the learned Court below in due compliance of the direction of the Hon'ble High Court passed in C.O. No. 4118 of 2018 appears to have recast the issues on the basis of the amended plaint and additional written statement thereof and decided to consider the application of the plaintiffs

under order 11 Rule 14 of Civil Procedure Code at later stage and if situation demands.

It is settled principal of law that issues can be framed at any stage of the suit and even at the time of writing of judgment additional issue can be framed or issue can be recast. Therefore, in view of discussion made above this Court holds that the Court below has committed error in keeping the application of the plaintiffs under Order 11 Rule 14 CPC in abeyance with uncertainty. The order impugned is here by set aside and the petition under Order 11 Rule 14 CPC filed by the plaintiff is hereby allowed. The defendants are directed to produce the documents mentioned therein within a month from the date hereof before the learned Court below. On production of documents by the defendants proceed further with the hearing of the case as per law.

Accordingly, C.O. 1412 of 2021 is allowed.

Connected applications, if any, are disposed of.

Interim order, if any, stands discharged.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Kesang Doma Bhutia, J.)

Later

Ld. Advocate for the Opposite Parties No. 5 - 10 prays for Stay of operation of the order.

Stay of the order prayed for considered and refused.

(Kesang Doma Bhutia, J.)