

23.08.2022
Item No.13
Ct. No.7
CHC
(disposed of)

C.O.2070 of 2022

M/s. Max Industries & ors.

Vs.

State of West Bengal & ors.

Mr. Aniruddha Chatterjee,
Mr. Santanu Chatterjee,
Mr. Rajendra Kumar Nandi
...for the petitioners

Mr. Probal Kumar Mukherjee, Sr. Advocate
Mr. Tapas Kumar Dinda
...for the o.p. nos. 6 and 7.

The subject-matter of challenge in this case is against order dated 27th June, 2022, passed by learned Civil Judge (Senior Division), 3rd Court, at Alipore, South 24 Parganas in Title Suit No.1915 of 2016, rejecting an application under Section 151 C.P.C. praying for producing some documents, as additional evidence in this case.

Mr. Chatterjee, learned advocate appearing for the petitioners at the very threshold of this case makes his submission upon restricting to the three documents, appearing in serial no.1 to 3 of schedule appended to the petition under Section 151 C.P.C., filed by the petitioners and thereby disclosing that though in the schedule of petition under Section 151 C.P.C. there has been disclosed as many as 11 documents requiring production, but three documents, as referred hereinabove, out of 11 documents, may be permitted to

be produced as additional evidence for the fair adjudication of the matter in controversy between the parties.

As regards the delay caused in production of such documents at the appropriate point of time, Mr. Chatterjee submits that there has been a massive fire broke out in the office of the petitioners at Pollock Street on 14th May, 2005. Because of such massive fire the petitioners had to shift their residence to elsewhere.

The documents disclosed in schedule appearing in serial nos.1 to 3 pertain to existence of a partnership firm and its valid registration before the appropriate authority concerned.

Admittedly, such documents could not be produced, when petitioners, as plaintiffs, adduced their evidence before the court below.

Mr. Chatterjee has endeavoured to explain the reasons as to why such documents could not be produced a) massive fire being break out in 2005, b) shifting of residence of plaintiffs to elsewhere, c) inability of the petitioner to find, or trace out the documents for immediate production of the same before a court of law, while adducing their evidence.

This is suit for declaration, wherein some of the documents have been sought to be declared as cancelled.

Upon assigning such reasons, as regards the delay caused and the inability of the petitioners to produce such documents, Mr. Chatterjee further submits that the required documents, referred hereinabove, were applied for sometime in June, 2022, and ultimately received on 23rd June, 2022.

It is, thus submitted that for the no fault on the part of the petitioners such documents could be produced earlier. Such fault on the part of the petitioners is not deliberate and intentional, Mr. Chatterjee argues.

Mr. Mukherjee, learned Senior Advocate appearing for the opposite party nos.6 and 7 disputes with the submission of petitioners alleging that the purpose of production of this documents, as additional evidence is nothing but to fill up the lacuna revealed in the cross-examination of plaintiffs' witness.

It is contended by Mr. Mukherjee that petitioners did not exercise their due diligence during the period, when the evidence of P.W.1 was continued i.e. from 31st January, 2011 to 26th March, 2014. After the evidence of P.W.1, there has been examination of as many as six witnesses, adduced by defendants. The suit has already been set for argument, and on six dates, spanning between 20th April, 2022 to 14th June, 2022 have been fixed for argument. It is at this stage, petitioners may not be permitted to adduce documents

as additional evidence simply to fill up the lacuna disclosed in the cross-examination of plaintiffs.

Reliance is placed by Mr. Mukherjee on a decision reported in **(2016) 11 Supreme Court Cases 296** in the case of ***Ram Rati versus Mange Ram (Dead) through legal representatives & ors.*** to submit that when there is an attempt to fill up the lacuna in the evidence, there may not be any order permitting production of documents as additional evidence at any subsequent stage, which is not at all permissible.

Having considered the submission of both sides, it appears that prayer for production of some documents as additional evidence was made by the petitioners in aid of petition under Section 151 C.P.C., when admittedly the suit has been set for argument, and the argument of defendants has already been closed.

This is a case wherein the documents sought to be produced could not be produced at the appropriate point of time during trial. The only reason assigned is that there has been a massive fire broke out some time in May, 2005 prompting the petitioners/plaintiffs to shift their residence elsewhere, and as a result of which documents could not be found out, despite exercise of due diligence. The documents however, could be obtained on 23rd June, 2022 by way of certified copy of the relevant documents from the appropriate authority.

Admittedly, there has been delay caused in causing production of such documents referred above, and the delay caused regarding production of such documents could not be sufficiently explained, but such delay caused in the production of the such documents should not be construed to be fatal on the premise that there must be an end of litigation. Whether such documents are at all needed for the fair adjudication of the matter in controversy between the parties, the same will be decided at the final hearing of the suit giving a hearing for the purpose.

Mere production of such documents would not take away right of cross-examination of the opposite parties opposing production of such documents at such belated stage. If the documents are allowed to be produced in evidence, the opposite parties will have every right to challenge the same undertaking required cross-examination under the provisions of the law, so as to challenge the veracity, authenticity and genuineness of the documents.

Section 151 C.P.C. merely recognizes the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with the law to do what is right and undo what is wrong i.e. to do all things necessary to secure the ends of justice and prevent abuse of its process, but such power has to be exercised with due circumspection.

Upon perusal of the impugned order, it appears that rejection of prayer under Section 151 CPC to produce documents as additional evidence appears to be not a sound exercise of discretion, what is in essence of the power vested to court under Section 151 C.P.C. The ratio of such decision, as cited by Mr. Mukherjee in that view of the matter, would not be straightway applicable over the facts and circumstances of the case.

It is, however, true that there has been serious laches exposed on the part of petitioners for not causing production of the same much earlier, and such unexplained reasons have to be redressed to opposite parties upon saddling costs.

The revisional application, for the reasons mentioned hereinabove, is disposed of upon setting aside the order dated 27th June, 2022 passed in Title Suit No.1915 of 2016, subject to payment of Rs.30,000/- (Rupees Thirty Thousand only) to opposite parties, to be paid by petitioners, within ten (10) days from the date of this order.

Upon depositing such costs, within the period stipulated hereinabove, petitioners may be permitted to produce three documents, appearing in serial no.1, 2 and 3 of schedule disclosed in the petition, dated 24th June, 2022, under Section 151 C.P.C. on a date, to be suitably fixed by the court below within fortnight

thereafter, and upon collection of the documents in evidence, the logical conclusion of the suit may be reached within one month thereafter so as to dispense with the justice in a faster mode.

This would not however, prevent the opposite parties to undertake required cross-examination in respect of the documents mentioned hereinabove produced as additional evidenced, and the court below has every right to decide the relevancy of the documents sought to be produced at the time of final hearing of this case.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)