

S/L 64
31.03.2023
Court No.652
SD

CO 779 of 2021

TDI International Private Limited
Vs.
Airports Authority of India

Mr. Surajit Nath Mitra
Mr. Soumya Roy Chowdhury
Ms. Anamika Pandey
Ms. Amrita Pandey
Mr. Ghanshyam Pandey

...for the Petitioner.

Mr. A.K. Poddar
Mr. Ayan Poddar
Ms. Poulami Bhowmick

...for the Opposite Party.

Being aggrieved and dissatisfied with the order no.35 dated February 5, 2021 passed by the learned Judge, Commercial Court, North 24 Parganas at Rajarhat in Money Suit No.5 of 2019, present application under Article 227 of the Constitution of India has been preferred.

Petitioner contended that the petitioner is a company incorporated under the Companies Act and the petitioner is the defendant in Money Suit No.5 of 2019 which is pending before the Commercial Court at Rajarhat. The opposite party is a statutory authority established under the provisions of the Airport Authority of India Act, 1994 and is the plaintiff of the said suit, who filed the suit claiming a money decree, directing the defendant to pay a sum of Rs.40,26,53,839/- and also for direction to pay interest at the rate of 18 per cent per annum from January 2006 till date of payment on the said amount of Rs.40,26,53,839/- along with other reliefs.

The petitioner defendant entered appearance in the said suit and filed written statement and the court below had fixed December 5, 2018 for framing issues and accordingly, both the parties have filed their suggested issues.

The petitioner contended that plaintiff/opposite party knowing that it is bound to fail in its suit and only to harass the petitioner and to cause delay in disposal of the suit, has made an application seeking one week time for collecting/disclosing documents. However, no documents were disclosed by the plaintiff within a week or even thereafter. Subsequently, the opposite party again sought to disclose some purported documents in the said suit praying for leave to disclose additional documents without any original documents. From the said prayer, it would appear that no cause either sufficient or otherwise was made out by the plaintiff for non-disclosure of such documents along with the plaint. The defendant/opposite party in its objection has taken specific plea that the prayer for filing documents as made by the plaintiffs are vexatious, harrasive and speculative.

However, learned court below after hearing both the parties was pleased to pass an order dated February 10, 2020 allowing the application filed by the opposite party herein thereby allowing them to disclose additional documents. Being aggrieved by the said order dated February 10, 2020, the petitioner filed an application under Article 227 of the Constitution of India being CO 1282 of 2020.

This court while disposing of the said application was pleased to observe that *“From a bare reading of the said amended provision it is evident that a court can allow a plaintiff to rely on documents, which were his/her power, possession, control and custody but were not disclosed along with the plaint, only upon being satisfied that the plaintiff have established the reasonable cause for non-disclosure of such documents along with the plaint. This appears to be mandatory condition for entertaining any application under Order XI Rule 1(5) of the Code. However, from a reading of the impugned order it is evident that there is no finding of the learned court below accepting the explanation of the plaintiff-opposite party to substantiate any reasonable cause for non-disclosure of such documents along with the plaint. Accordingly, I am unable to sustain the impugned order dated February 10, 2020 passed by the learned Judge, Commercial Court at Rajarhat, North 24 Parganas in Money Suit No.05 of 2019(C/C) and the same stands set aside.*

The learned court below is directed to rehear the application filed by the plaintiff-opposite party for disclosure of certain documents, and decide the same with a reasoned order.

The plaintiff-opposite party may file a supplementary affidavit before the learned court below for removing the defect in the verification part of its application. Such supplementary affidavit should be filed within December 11, 2020.

The defendant-petitioner may file its counter-affidavit, if any, within December 18, 2020.

The learned court below is requested to decide the plaintiff's application afresh expeditiously, preferably within the month of January 2021."

On the basis of aforesaid directions passed by this court, the matter was heard afresh and by the order impugned dated 05.02.2021 the court below was pleased to grant leave to produce the document as listed in the application subject to proving the same in accordance with law and a cost of Rs.20,000/- also imposed.

Mr. S.N. Mitra, learned counsel appearing on behalf of the petitioner, submits that the order impugned is almost a carbon copy of the earlier order dated 10.02.2020 and he further submits that though this court was pleased to give specific direction while disposing of CO 1282 of 2020 that a reasoned order ought to be passed by the court below on the point of his satisfaction that the documents mentioned in the application could not be disclosed along with the plaint for reasonable cause but from the order impugned dated 05.02.2021 it appears that without complying said order of this court regarding discussion about court's satisfaction of reasonable cause for not filing those documents along with the plaint, the court below had granted leave to the plaintiff/opposite party for filing those documents and as such, the order impugned is liable to be set aside.

Learned counsel appearing on behalf of the opposite party raised strong objection and contended that sufficient

reason has been given in the order impugned and being satisfied about the reasonable cause, the court below has passed the order impugned which is quite justified and court below while passing the order has specifically observed that substantial right of the plaintiff must not be defeated by technicalities of procedural law, as all the rules of procedure are the handmade of justice. Accordingly, he submits the order impugned does not call for any interference.

Considered the submissions made by both the parties.

On perusal of the order impugned dated 05.02.2021, it appears in the last paragraphs the court below in support of reasonable cause satisfied himself by observing that *“it is a frank admission on the part of the plaintiff that the missing documents were finally traced and pointed out the practical situation and difficulties in Govt. establishment such as, Airport Authority were officials come and go on transfers as well as documents are voluminous and had to maintain big and large records, slight probability of missing record happens. But then non-disclosure of relevant documents at the earliest will not entail any benefit to the plaintiff rather it will cause huge loss to the alleged claim of public money.*

Importantly, the substantial right of the plaintiff must not be defeated by technicalities of procedural law. All the rules of procedure are the handmade of justice. The language employed by the draftsmen of processual law may be liberal or stringent but the fact remains that the object of prescribing procedure is to advanced the cause of

justice. Further, the defendant will not be prejudice with the production of the above documents as the trial has not started and he will get ample opportunity to confront and challenge those documents.”

In view of the above, the court below has shown his satisfaction in the speaking order about the reasonable cause submitted by the plaintiff/opposite party herein and on the basis of that as he came to the conclusion that substantial right of the plaintiff must not be defeated on the ground of technicalities and he made specific observation that such documents are required for proper adjudication of the suit. However court is also conscious to grant leave to produce the documents subject to proving the same in accordance with law and as such, I find that the court below made no mistake in allowing the said prayer and accordingly the order impugned does not call for any interference by this court as it is neither perverse nor the court below has exceeded his jurisdiction vested upon him.

Accordingly, CO 779 of 2021 is dismissed.

There will be no order as to costs.

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

(Ajoy Kumar Mukherjee, J.)

Learned counsel appearing on behalf of the petitioner, after passing of this order, prays for stay of the operation of order. Prayer is considered and rejected.

(Ajoy Kumar Mukherjee, J.)