

Ct.
No.
652

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**05.10
2023**

C.O. 2528 of 2018
Gujrat Composite Ltd.
-Versus-
Sudipta Traders Pvt. Ltd & Anr.

Mr. Joyjit Roy Chowdhury ...For the Petitioner

Mr. Krishnaraj Thaker
Mr. Deepak Kripalani
Ms. Trini Joardar

...For the Opposite Party Nos. 1 & 2

Ms. Sutapa Sanyal

...For the Opposite Party No. 3

Being aggrieved by and dissatisfied with the order dated 11th August, 2017 passed by the learned Civil Judge (Junior Division), 4th Court, Serampore in Title Suit No. 158 of 2015 present application under Article 227 of the Constitution of India has been preferred.

The opposite party Nos. 1 and 2 / plaintiffs filed aforesaid suit on 9th June, 2015 and the defendant No. 1 / petitioner herein appeared after receiving summon on 19th September, 2015.

It is submitted that the summon containing the copy of the plaint through process server was served upon the petitioner and some portion of the said copy of the plaint are lying blank. For the aforesaid reason defendant No. 1 made a prayer before the Court below for filing a fresh copy of the plaint by filing an application on 5th December, 2015. On that date a fresh copy of the plaint was served to both the defendants.

Defendant / petitioner's case is that on comparison of those two copies of the plaint that is copy of the plaint which was served through process server and the copy of the plaint which was handed over at the time of hearing on 5th December, 2015, defendants found lot of discrepancies and

it appears that in some portions namely in paragraph 28 and in the prayer portion some handwritten sentences were incorporated in the plaint. Accordingly, the defendant / petitioner made allegation that the plaint might have been tampered after filing of the suit, without seeking prayer for amendment for the aforesaid incorporation.

Mr. Krishnaraj Thaker, learned Counsel appearing on behalf of the plaintiffs / opposite party Nos. 1 and 2 submits that it was merely a mistake on the part of the plaintiffs who inadvertently served incomplete copy of the plaint upon defendants through process server though all such corrections were duly incorporated in the original plaint before filing the plaint. However, when the service of incomplete copy of the plaint upon the defendants were brought to the notice of the plaintiffs, corrected copy of the plaint was at once served upon the defendants on the very date of hearing of the application i.e. on 5th December, 2015.

It is further submitted by Mr. Thaker that only to drag the proceeding of the suit, defendants have adopted various tactic by filing petitions one after another and in that score without having any evidence they filed criminal case levelling same allegation of tampering record being C.R. 143 of 2016. Against said proceeding plaintiff/opposite parties preferred Revisional application before this court, being C.R.R. 2827 of 2016, which however was turned down by this Court by an order dated 8th August, 2023.

After about three months of getting fresh copy, petitioner filed one application under section 151 of the Code praying *inter alia* for an order of enquiry, in what manner such purported incorporations, additions/alteration have been introduced. Plaintiffs filed written objection

against said Application.

When the matter came up for hearing before the Trial Court, the Trial Court held that he has compared the alleged defective earlier copy of plaint and also the copy of the plaint which was served and upon careful scrutiny he found that several anomalies exists in the earlier copy of the plaint and several blank spaces are found at paragraph 13, 25, 30 and 31. There are certain additions in clause (a) of the prayer portion of the plaint in paragraph 29 of the fresh copy of the plaint, which is not there in the earlier copy of the plaint. However, after considering the submissions of both the parties, he came to a finding, with regard to the incorporations made in the copy of the plaint, that there is nothing in the record, which shows that such changes were made after the institution of the present suit. Moreover, the changes in the prayer portion of the plaint does not also introduce any new prayer. He further observed that there is nothing in the record which can satisfy the Court with regard to the ill intention of the plaintiffs to tamper the plaint. Moreover the readiness of the plaintiffs to supply a fresh copy of the corrected plaint on the very date, itself shows that the negligence was bona fide and one cannot overlook the fact that the defendants received a fresh copy of the plaint on 5th December, 2015 and thereafter prayed for time to file their written statement and it took them three months to present this application with an allegation of tampering allegedly made by the opposite party No. 1 and 2 by filing petition under Section 151 of the Code of Civil Procedure.

Having considered the facts and circumstances of the case and in the absence of any document or proof that any tampering was made in the plaint by the plaintiff after presenting the plaint, the application which was filed three

months after getting fresh copy of plaint, alleging the story of tampering plaint, is clearly an afterthought and I find that the present application is not only vexatious but also it has been filed only to drag the proceeding of the suit. The order impugned and the findings made by the Court below is neither perverse nor illegal and the defendant Nos. 1 and 2 had miserably failed to substantiate that any new statement has been incorporated in the plaint by tampering with the plaint during pendency of the suit.

In such view of the matter, C.O. 2528 of 2018 is dismissed with a cost of Rs. 10,000/- to be paid by the defendant no.1/ petitioner herein to the opposite party Nos. 1 / plaintiff within a period of three weeks from the date of communication of this order.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)