



2024 : DHC : 4324



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 26.02.2024***
Judgment pronounced on: 27.05.2024

+ **CM(M) 1974/2023 & CM APPL.61746/2023**

SURINDER SINGH SOOD Petitioner
Through: **Mr. Prem Paul Ahuja, Adv.**

versus

RAJINDER SINGH & ORS. Respondents
Through: **Mr. Khowaja Siddique, Mr. Ashwani Kumar and Mr. Sushant Singh, Adv.**
for R-1 & 2.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The petitioner is aggrieved by the order dated 31.07.2023 passed by the learned Additional District Judge-01, Tis Hazari Courts, Delhi (hereinafter referred to as "Trial Court") in CS no.11410/2016, titled as "*Rajinder Singh and Anr. vs. Ram Kumar Pawar and Anr.*" whereby the learned Trial Court dismissed the application filed by the petitioner herein under Order XI Rule 12 and 14 read with Section 151 of Civil Procedure Code, 1908 (hereinafter referred to as "CPC") seeking production of certain documents. Thus, the present petition has been preferred invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.



2. For the purpose of adjudication, the relevant facts in the present case are that the petitioner herein is engaged in the business of sale and purchase of human hair under the name of M/s Shri Viaayah Exports having its registered office at Y-118, Regency Park-II, DLF-IV, Gurgaon-122009. On the other hand, respondent no.1 herein operates a Gas Agency business under the name of Himmat Gas Service with its registered office located at Shop no.1, Hiral Market, Pooth Kalan, New Delhi. Respondent no.2 herein is the wife of respondent no.1. Additionally, respondent no.3 herein is also involved in the business of exporting human hair.

3. Petitioner herein is the defendant no.2, while respondent nos. 1 and 2 herein are the plaintiffs and respondent no.3 is the defendant no.1 in CS (Comm.) no. 11410/2016 which is pending adjudication before the learned Trial Court.

4. On 18.09.2007, the respondent nos.1 and 2 filed a suit before this Court bearing CS(OS) no. 2273/2007 titled as "*Rajinder Singh & Anr. vs. Ram Kumar Panwar & Surinder Singh Sood*" seeking recovery of Rs. 77,07,654/- along with pendente lite interest against the petitioner and respondent no.3. As a counterblast, the petitioner on 03.12.2007, initiated a suit for mandatory injunction and for recovery of Rs. 5,89,500/- before the learned Trial Court bearing no. 318/2007 titled as "*Surinder Singh Sood vs. Ram Kumar Panwar*" against the respondent nos.1 and 3.

5. Vide order dated 26.02.2014, this Court consolidated both the aforesaid suits and held that the evidence in one suit shall be read as evidence in the connected suit. Thereafter, a notification dated 24.11.2015,



relating to the pecuniary jurisdiction of Delhi High Court had come into force. In view of the said notification, the suit bearing CS(OS) no. 2273/2007 pending before this Court was transferred to the Court of learned District Judge (West), Tis Hazari, Delhi. The suit was then re-numbered as Civ DJ no. 11410/2016.

6. On 29.11.2019, the petitioner moved an application before the learned Trial Court under Order XI Rule 12 and 14 CPC read with Section 151 CPC seeking to place on record certain documents such as income tax returns, balance sheets of the relevant years etc. Additionally, the petitioner filed the written submissions dated 6.07.2023 in support of his application along with relevant judgments.

7. Vide impugned order dated 31.07.2023, the learned Trial Court dismissed the aforesaid application stating that there is no necessity for issuing any such directions as sought in the application. The petitioner being aggrieved by this order has filed the present petition.

8. Mr. Prem Paul Ahuja, the learned counsel for the petitioner submitted that the learned Trial Court overlooked the provisions of Order XI Rule 12 CPC and wrongly dismissed the petitioner's application. Reliance is placed on the judgment of the Hon'ble Supreme Court in ***M.L. Sethi vs. R.P. Kapur*, (1972) 07 SC CK 0010**, wherein it was held that the Court can order the production of documents at any stage to resolve a controversy.

9. It was submitted by the learned counsel that the learned Trial Court failed to consider the written submissions filed by the petitioner in support



of the application under Order XI Rule 12 and 14 CPC. Additionally, the learned Trial Court also did not discuss the judgments cited by him.

10. Further, the learned counsel submitted that the learned Trial Court has wrongly stated that reply has been filed by respondent no. 1 and 2 to the aforesaid application whereas no such reply has been filed by the respondents.

11. Learned counsel for the petitioner submitted that the affidavit filed by respondent no.1 is not in accordance with the provisions of Order XI Rule 12 & 14 CPC. It was the duty of respondent no.1 and 2 to file a reply to the application dated 29.11.2019 and to admit or deny the averments made by the petitioner in the said application.

12. Learned counsel also submitted that the learned Trial Court failed to consider that the production of documents requested by the petitioner, as mentioned in the application under Order XI Rule 12 and 14 CPC, would refute the false claims made in the suit filed by respondent no.1 and 2 against the petitioner and respondent no.3 for the recovery of Rs. 77,07,654/-.

13. The learned counsel for the petitioner further relied upon the following judgments:

- i. *Rajkishore Prasad and others vs. The State of Orissa, AIR 1979 Ori 96.*
- ii. *M/s. J.S. Construction Pvt. Ltd. vs. Damodar Rout, AIR 1987 Ori 207.*



iii. *Sri Niwas vs. The Election Tribunal at Lucknow and Others, AIR 1955 All 251.*

iv. *Raj Sarogi vs. American Express, 2001 (60) DRJ 138 (DB).*

14. The submissions were vehemently controverted on behalf of the respondents, the learned counsel submitted that the learned Trial Court has rightly decided the controversy between the parties as the petitioner will have sufficient opportunity to summon the record in its evidence, if it deems essential to prove the documents. Moreso, the case is at the stage of conclusion of evidence of the respondents and the petitioner has been moving frivolous applications with intent to delay the proceedings.

15. Order XI Rule 12 and 14 CPC govern the discovery and production of documents in civil cases. While Order XI Rule 12 allows parties to request disclosure of the relevant documents from the opposite side in a civil suit. Order XI Rule 14 CPC provides for production of documents at any time during the pendency of any suit and the Court can direct the 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 suits.

16. In the present case, petitioner is seeking direction for the respondents to file the following documents:-

- “1. Income Tax Returns filed by plaintiffs for the Assessment years 01.04.2003 to 31.03.2019 alongwith the complete statement of affairs of respective returns alongwith their, debtors and creditors.*
- 2. Certified copies of the Income Tax Orders passed by the Assessing Authority on the income tax returns filed by plaintiffs for abovesaid financial years.*
- 3. Documents pertaining to application of loan qua property bearing no.A-56, Multan Nagar, New Delhi.*



4. Balance sheet of M/s Hirminat Gas Agency and plaintiff no.1 for the financial years as above stated.”

17. Learned Trial Court has shown disinclination to allow the application by holding as under in the impugned order:-

“This Court is of the considered view that present suit has been filed by the plaintiffs seeking recovery of certain amount and issues were framed in this matter on 26.02.2014. Perusal of order dated 26.02.2014 shows that only one issues has been framed in this matter, which is required to be proved by plaintiffs. Perusal of record further shows that part cross-examination of plaintiff no.1 has already been conducted. This Court is of the further view that while deciding the case, Court will look into the documents filed by plaintiffs and if there will be any deficiency in the I documents filed by plaintiffs, they will face the consequences of the same. Even otherwise, plaintiff no.1 is still under cross-examination and learned counsel for defendant no.2 can assail the case of plaintiffs by putting relevant questions during cross-examination. In these circumstances, this Court is of the considered view that there is no need for giving any such directions, as prayed in the present application. Accordingly, this application is disposed off as not allowed.”

18. Pertinently, the respondent no.1 and 2 have brought this suit before the Court for recovery of Rs. 77,07,654/-, accordingly, the burden is on them to prove their case. Therefore, the respondent no.1 and 2 would lead oral and documentary evidence and in case of any deficiency in the documents, the Court will draw an adverse inference against them, if they fail to produce the relevant documents. Moreso, some of the documents to be discovered are in the nature of public records and the petitioner will have an opportunity to summon the record while leading his evidence.

19. The learned Trial Court has correctly held that respondent no.1 is still under cross-examination, therefore, the petitioner will have sufficient opportunity by putting relevant questions to him during cross examination.



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20. The impugned order does not suffer from any infirmity. Consequently, the present petition along with pending application is dismissed.

SHALINDER KAUR, J.

MAY 27, 2024

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