

D/L- 22
25/03/2025
Ct. No.-6
Aritra

C.O. 1032 of 2025

**Nijamuddin
Vs.
Ramzan Ali & Ors.**

Mr. Anshunath Chakraborty
...for the petitioner

Mr. Abhijit Ray
Mr. Santu Nandy
Mr. Md. Ayaan
....for the opposite party

Affidavit of service filed in Court today is taken on record.

This application under Article 227 of the Constitution of India is at the instance of the defendant No.1 and is directed against an order being No.46 dated January 8, 2025 passed by the learned Judge, 3rd Bench, City Civil Court, Calcutta in Title Suit No.1447 of 2018.

By the order impugned the application under Order 8 Rule 1A (3) of the Code of Civil Procedure stood rejected.

The learned advocate appearing for the petitioner submits that due to *bona fide* mistake by the learned advocate of the petitioner herein the documents which the petitioner are now seeking to produce were not filed along with the written statement.

Mr. Ray, learned advocate appearing for the opposite party vehemently opposes the prayer of the

petitioner for production of the said documents at this belated stage. Mr. Ray submits that in spite of a specific order passed by the learned trial judge directing the petitioner herein to produce the documents for the inspection of the same by the plaintiffs/opposite parties, the petitioner herein did not comply with such order.

Heard the learned advocate for the parties and perused the materials placed.

It is not in dispute that no documents along with the written statement was filed. The opposite parties herein filed an application under Section 151 of Code of Civil Procedure praying for a direction upon the petitioner herein to furnish the authenticated documents and such application was allowed by the learned trial judge by an order dated April 20, 2022 by directing the opposite parties to inspect the authenticated documents mentioned in paragraph 9 of the written statement and the defendants were directed to produce and cause discovery and inspection of the aforesaid documents. It appears from the order dated June 10, 2022 that the defendant filed a list of document and also served copies of the same to the learned advocate for the plaintiffs/opposite parties herein. Mr. Ray would contend that the copy served upon the plaintiffs/opposite parties were photocopies of the documents and the same were not legible.

In the meantime, the petitioner has filed the affidavit in-chief annexing copies of the documents which the petitioner are now seeking to rely upon.

Order 8 Rule 1A of the Code of Civil Procedure deals with the duty of the defendant to produce documents upon which relief is claimed or relied upon by him. It states that where the defendant bases his defence upon a document or relies upon a document in his possession or power, in support of his defence or claim for set off or counter-claim, he shall enter such document in a list and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver a document and a copy thereof, to be filed with the written statement. Sub-rule (2) of Rule 1A of Order 8 states that where such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is. Sub-rule (3) of Rule 1A states that a document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

Thus upon a reading of Order 8 Rule 1A it is evident that if copies of the documents which the defendant seeks to rely upon is not filed along with the written statement the same cannot be received in evidence at the hearing of the suit without the leave of

the Court. It is for such purpose that the petitioner has filed the instant application under Order 8 Rule 1A (3) of the Code of Civil Procedure.

The learned advocate for the petitioner places reliance upon a decision of the Hon'ble Supreme Court passed on October 13, 2020 in Civil Appeal No.3427 of 2020 in the case of **Sugandhi (dead) by Lrs. & Anr. Vs. P. Rajkumar**, in support of his contention that the Court can grant leave to produce documents by a party even at a later stage.

The Hon'ble Supreme Court in **Sugandhi (supra)** held that the Court should take a lenient view when an application is made for production of documents under sub-rule (3) of Rule 1A of Order 8. The Hon'ble Supreme Court held thus:-

“9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3).”

Considering the nature of the dispute between the parties this Court is of the considered view that the said documents are necessary for arriving at a decision in the suit.

Mr. Ray would contend that the documents which the petitioners are now seeking to rely upon are manufactured documents and since the evidence of the plaintiffs have already been closed, the opposite parties shall suffer serious prejudice as the opposite parties will be deprived from controverting the said documents.

Order 18 Rule 4(1) of the Code of Civil Procedure states that in every case, in examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence. Proviso thereto states that where documents were filed and the parties rely upon the documents the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court. Upon reading Order 18 Rule 4(1) of the Code of Civil Procedure this Court holds that even if the copies of the documents are produced along with the affidavit-in-chief, the proof and admissibility of such documents shall be subject to the orders of the Court.

Even if such documents are permitted to be produced, the proof and admissibility of the said documents shall be subject to the orders of the Court.

For such reason this Court is inclined to interfere with the order impugned and allow the prayer of the petitioner for production of the documents as sought for by the petitioner in the application under Order 8 Rule 1A (3) of the Code of Civil Procedure. However, considering the fact that the evidence of the plaintiffs have already been closed it will be open to the plaintiffs to take appropriate steps in this regard in accordance with law by way of recalling their witness if the same is necessary.

For the reason as aforesaid, the impugned order is set aside. The application under Order 8 Rule 1A (3) of the Code of Civil Procedure stands allowed. CO 1032 of 2025 stands allowed with the aforesaid directions.

There will be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)