

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

***C.O. 2145 of 2024
Rekha Kundu & Ors.***

VERSUS

Jhuma Aich

For the petitioners:

Mr. Partha Sarathi Chatterjee, Adv.
Mr. Debayan Roy, Adv.

For the Opposite Party:

Mr. Nilanjan Adhikari, Adv.
Ms. Sourav Mondal, Adv.

Last Heard On: February 07, 2025

Judgment On: February 14, 2025

Biswaroop Chowdhury, J:

The petitioners before this Court are the plaintiffs in an eviction suit and are aggrieved by the Order dated 9th May 2024 passed by Learned Civil Judge (Junior Division) Additional Court at Asansol Paschim Bardhaman in Title Suit No. 130 of 2023. The petitioners being aggrieved by the Order dated 09-05-2024 passed by the Learned Trial Court in rejecting the petition under Order XI

Rule 15 read with Section 151 of the Code of Civil Procedure filed by petitioner no-2 has come up with the application under Article 227 of the Constitution of India.

The case of the petitioners in the application under Order XI Rule 15 of the Code of Civil Procedure may be summed up thus:

1. That in terms of the provision of Order 11 Rule 15 of the Code of Civil Procedure the plaintiff gave notice to the defendant on 30-11-2023 to produce such documents reference whereof is made in written statement for the inspection of the plaintiff in form No. 7(Apendix C. CP. Code) as laid down in Order 11 Rule 16 of the Code of Civil Procedure.
2. The defendant did not comply with such notice and also failed to give notice stating time at which he would produce within the time-frame stipulated under Order 11 Rule 17 of CPC. Rather he took part in trial and after closure of the plaintiff's evidence went to produce his evidence.
3. As the defendant failed to comply with notice under Order 11 Rule 17 of the Code of Civil Procedure the defendant cannot put any such document as mentioned in the notice of form No. 7 as evidence on her behalf in the suit unless she satisfies the Court that such document relates only to her own title, he being a defendant to the suit or that

he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice.

The petitioner no-2 prayed for an order prohibiting the defendant/opposite party to put any of those documents in evidence which he failed to produce after service of notice in terms of Order 11 Rule 15 of the Code of Civil Procedure.

By Order dated 09-05-2024 Learned Trial Judge upon hearing the Learned Advocates was pleased to dispose the application under Order XI Rule 15 of the Code of Civil Procedure by observing and directing as follows:

Plaintiff no-3/petitioner, Siddhartha Kundu filed the instant petition under Order XI Rule 15 r/u. sec 151 of CPC supported by affidavit inter alia, submitting that the plaintiff gave notice to the defendant on 30-11-2023 to produce documents referred in her Written Statement for inspection. But the defendant did not comply the same within the stipulated time.

Thus the defendant is not at liberty to put such documents in evidence.

Though the defendant did not file any written objection but Ld. Counsel for the defendant raised strong verbal objection inter alia stating that no notice was served upon the defendant neither any intimation was given. Moreover the petition is not maintainable at this stage and should have been filed prior to the framing of issues. Notice was filed in the Court which was kept in

abeyance. Thus the instant petition is not maintainable and liable to be rejected with cost.

Hd. Both sides. Perused the petition along with other materials on record considered.

Accordingly, the record is taken up for passing necessary order.

Before delving into the merit of the instant petition it has to be kept in mind that it is the contention of the plaintiff itself that the documents had been mentioned in the Written statement which was filed long back on 14-09-2023. Now it is unknown what prevented the plaintiff to seek for the instant relief then when they have enough scope for that and suddenly they felt the need of the same at this stage. Now reverting back to the merit of the instant petition, it will appear that on 16-12-2023 one notice was filed in record but had not been duly served upon the defendant after filing of the Written Statement or prior to the framing of issues. The plaintiffs remain dormant till date and now trying to prevent defendant to adduce her evidence. Order XI Rule 15 of CPC is clear regarding the stage and process of seeking inspection of documents, which the plaintiff failed to comply, so now the plaintiffs have no locus standi to file the instant petition at this stage. Moreover it is the purview of the Court to decide what documents should be considered as evidence. Taking cue of the aforesaid discussions the instant petition of the plaintiff seems to be baseless and unnecessary and thus liable to be rejected.

Hence it is

ORDERED.

The petition under Order XI Rule 15 r/w sec 151 of CPC dt. 18.04.2024 filed by the plaintiff no. 3 is considered and rejected on contest without any order as to cost.

The instant petition stands disposed of.'

The petitioners being aggrieved by the Order dated 9th March 2024 passed by the Learned Trial Judge has come up with the instant application under Article 227 of the Constitution of India.

It is the contention of the petitioners that the Learned Trial Court erred in rejecting the petition dated 18-04-2024 forgetting the actual incident that the Trial Court itself in its Order dated 23-11-2023 fixed 16-12-2023 for filing list of witnesses and P.H. discovery and inspection if any in the meantime and the plaintiffs accordingly gave notice for inspection to the defendant on 30-11-2023. It is further contended by the petitioner that the Learned Trial Court failed to appreciate the provisions of Order 11 Rule 15 of the Code of Civil Procedure where every party to a suit is entitled to give notice to any other party to produce documents for inspection also at the settlement of issues and not only before settlement of issues.

It is also contended that the Learned Trial Court erroneously held that the plaintiffs remained dormant till date though the notice itself exhibits that

the plaintiffs served notice upon the defendant on 30-11-2023 in form No-7 for the inspection to the defendant.

Heard Learned Advocate for the petitioners and Learned Advocate for the opposite party. Perused the petition filed and materials on record.

Learned Advocate for the petitioner submits that the Learned Trial Judge erred in rejecting the petition filed by the petitioners when notice for inspection was given prior to the date fixed for peremptory hearing. Learned Advocate further submits that the plaintiff under Rule 15 of Order 11 of the Code of Civil Procedure was entitled to get the documents inspected which was not complied by the defendants/opposite parties.

Learned Advocate relies upon the following Judicial decisions.

R. Ganesan VS The State of Tamil Nadu Being CRP (PD) No-260 of 2014.

Vungarala Venkanna. V Anisethli Rama Rao (Madras). Civil Revn. No-753 of 1933.

Learned Advocate for the opposite party submits that the Learned Trial Judge did not commit any error in rejecting the prayer of the plaintiff as the application was filed at a belated stage.

Learned Advocate further submits that as per Rule 15 of Order 11 notice for inspection ought to be given at or before framing of ISSUES which is not complied in this case.

Before proceeding to consider the material in issue it is necessary to consider the provisions contained in Order 11 Rule 15 of the Code of Civil Procedure.

Rule 15 of Order 11 of Code of Civil Procedure provides as follows:

Rule-15: Inspection of documents referred to in pleadings or affidavits- Every party to a suit shall be entitled [at or before the settlement of issues] to give notice to any other party in whose pleadings or affidavits reference is made to any document, [or who has entered any document in any list annexed to his pleadings] or produce such document for the inspection of the party giving such notice, or of his pleader and to permit him or them to take copies thereof and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court, that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.

Thus from the plain reading of Rule 15 of Order 11 CPC it is clear that every party to the suit is entitled to issue notice to the other party who has mentioned about such documents in pleadings, affidavits, or in the list of documents annexed to his pleadings to have inspection of those documents relied upon in pleadings or affidavits or entered in the list of documents and

the party upon whom such notice is issued has to comply the same failing which he will not be at liberty to put such documents in evidence unless he satisfies the Court that such document relates to his own title he being defendant or that he had sufficient cause.

As the Learned Advocate for the opposite party has raised the issue that the notice issued for inspection of documents was after framing of issues and prior to the date fixed for peremptory hearing it is necessary to decide as to whether the provision regarding the time within which inspection notice is to be given is directory or mandatory.

In the case of Salem Advocate Bar Association Tamil Nadu VS Union of India reported in AIR-2005. S.C. P-3353 the Hon'ble Supreme Court observed as follows:-

'49. The stipulation in Rule-15 of Order XI. Confining the inspection of documents 'at or before the settlement of issues' instead of 'at any time' is also nothing but directory. It does not mean that the inspection cannot be allowed after the settlement of issues.'

The Hon'ble Court was further pleased to observe that the rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules as procedure are hand-maid of justice and not its mistress.

Upon considering the decision of the Hon'ble Supreme Court in the case of Salem Bar Association (Supra) with regard to the time within which issuance of notice for inspection as mentioned in Rule 15 Order 11 CPC may be made and the fact that Learned Trial Court by order dated 23/11/2023 permitted discovery and inspection prior to 16/12/2023 it cannot be said issuance of inspection notice by the plaintiffs is barred by rules.

Thus the point for consideration now is whether the Learned Trial Court rightly rejected the petition dated 18-04-2024 filed by the petitioner no-2/plaintiff where petitioner no-2 prayed for prohibiting the defendant to put any of the documents in evidence on his behalf which he failed to produce after service of notice in terms of Order 11 Rule 15 of Code of Civil Procedure.

Upon plain reading of the provisions contained in Rule 15 of Order 11 CPC it is clear that in the event documents required for inspection is called for by a party the non-compliance of the notice will restrain the liberty of the party to produce the said documents in evidence which was not produced in terms of the notice under Order 11 Rule 15 of the Code of Civil Procedure.

In the case of Vungarala Venkanna (supra) the Hon'ble Court observed as follows:

'However in this case it is not contended that the plaintiff offered inspection in the Court. It is clear and it is admitted that he did not reply to the demand for inspection at all.

Under Rule 17 that demand has to be replied to within ten days, and, in the reply a time has to, be given within three days of that reply at which the documents could be inspected either at the office of the pleader or, if they were account books in constant use, at the place of trade or business.

Finally it was suggested that the plaintiff was misled by the wrong action of his pleader. The pleader has not put in any affidavit, nor has he been called to speak to the fact, nor is it a reason stated by the plaintiff himself in his petition to the lower Court. The rules are so clear that it is impossible to think that the pleader did not know the correct procedure. The object of the rules is evident that a party is not to have accounts sprung on him at the time of trial the contents of which he had no opportunity to acquaint himself with beforehand. That is exactly what has happened in this case and it is exactly for this reason that the rules have been framed. It is not open to the parties to lay down a fresh procedure for themselves and depart from the procedure laid down in the Code. The order of the Sub-Judge is clearly ultra vires, because, as stated above, the only reason offered for the omission to comply with the notice for inspection is one which Rule 17 says is not a legal reason. The petition must, therefore, be allowed with costs both here and in the Court below, the order of the lower Court set aside; and it is ordered that the documents cannot under Order 11, Rule 15, be put in as evidence on behalf of the plaintiff.'

In the case of R. Ganeson (*supra*) the Hon'ble Court observed as follows

‘6. It is no doubt true that the Court cannot compel the production of letters. But however, it can pass order and if the order is disobeyed, the Court has to resort to Order 11, Rule 21 of Civil Procedure Code. For the foregoing reasons, I am of the view that the order of the Learned Principal Subordinate Judge rejecting the application I.A. No. 1179 of 1995 is unsustainable the C.R.P.No. 2021 of 1996 has to be allowed.

(ii) AIR 1979 Noc 92 (Orissa) (M/S.Bishnu Ballab Panda V. Food Corporation of India);

The provisions of O.7 R.14 and O.11 Rr.15, 16 and other rules connected therewith are not empty formalities. They are based on whole some reasons and principles and trial Courts should not treat non-compliance of the said provisions in a light-hearted manner, more so when compliance of the same is insisted by the defendant. In a matter of this nature, after passing an order for the production of documents and after receiving the petition under Rule 21 of Order 1, the Court should insist on the production all the documents referred to and relied on by the plaintiff in the plaint, or should pass an order under Rule 21 of O.11. Hence, an order directing the defendant to file written statement when only some documents were filed by the plaintiff was not justified. In such a case, the Court should have exercised its power under O.11 R.21.’

Upon further reading of Rule 18 along with Rule 15 of Order 11 of the Code of Civil Procedure it will appear that when a party to the suit does not

comply the Inspection Notice as provided in Rule 15 Order 11 CPC the court in terms of Order 18 Rule 1 may on the application of the party desiring it make an order for inspection in such place and in such manner as it may think fit. However the proviso to Rule 18(1) Order 11 CPC states that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

In the case of *Burn and co. V Jitendra Natfa Maitra and others* reported in AIR-1956. Cal-592, this Hon'ble Court observed as follows:

'Rule 13 specifies what the affidavit of documents should contain. Rule 15 gives power to a party to serve notice on the other party in whose pleadings and affidavits reference is made to any document, to produce such document for inspection. R. 17 speaks of how inspection should be given and R.18 empowers the Court to order inspection when inspection has not been given in spite of notice. This question of discovery and-inspection has been the subject matter of numerous authorities in England as well as in India there are certain principles which have been firmly established in such cases, e.g. an affidavit of documents is considered as prima facie conclusive, but there are certain circumstances under which the Court can order inspection of documents although not stated in the affidavit, because it comes to the conclusion that their existence is reasonable or probable by reason of anything contained in the affidavit, or the documents contained therein, or the pleadings. It is unnecessary to go into these cases because it is conceded by learned counsel

appearing on behalf of the respondents that before inspection could have been ordered it was necessary to order the filing of an affidavit of documents. Such is in reality the procedure which has been laid down by law.'

In the case of Bagyalaksmi Ammal and others VS Sumvasu reddiar reported in AIR 1960 Madras the Hon'ble Court observed as follows:

'No defendant can be compelled to produce any document or to give inspection of the same for the purpose of facilitating cross-examination or for enabling the plaintiff to understand the genuineness or purport of the documents relied upon by the defendants for proving his case. It will lead to strange results if such grounds are to be accepted by courts in ordering discovery or inspection, especially when these grounds are not the ones contemplated under the rules which enable courts to direct discovery or inspection of documents.'

With regard to the decision relied upon by Learned Advocate for the Petitioner in the case of R.Ganeson (supra) this Court is of the view that the said decision does not apply to the facts of the case. In the case of R. Ganesan there was direction by the Learned Court under Rule 14 Order 11 of the Code of Civil Procedure to produce some documents but in the instant case there was no order under Rule 14 Order 11 CPC to produce any document by Court but simply there was a notice by one of the plaintiffs upon the defendant to produce some documents under Rule 15 of Order 11 CPC.

Now with regard to the decision relied upon by Learned Advocate for the petitioner, in the case of Vungarala Venkanna, (supra) the facts of the said case are not fully applicable to the facts of the case. In the case relied upon cause of action of the plaintiff was on the basis of transactions in certain account books of the plaintiff which defendant has no scope to know unless produced at the time of trial. The Hon'ble Court was pleased to observe as follows:-

'The object of the rules is evident that a party is not to have accounts sprung on him at the time of trial the contents of which he had no opportunity to acquaint himself beforehand.'

In the instant matter the documents on which inspection is sought is not books of account but rent receipts money order coupon relied by defendant and notice issued by plaintiff no-2. Out of these documents two are already with the plaintiff viz. Notice dated 04-2-2019 issued by plaintiff/petitioner no-2, and Rent Receipts in the name of Gautam Mitra being filed by the plaintiffs. Thus the plaintiffs are aware about these documents. The copies of money order coupon and rent receipts by Shib Ranjan Kundu are however lying with the defendant/opposite party. Thus it is within the power of the trial Court to decide whether the documents are required for inspection. Hence no further observation is necessary in this regard and the trial Court is competent to decide the same.

Upon considering the provisions contained in Rule 15 Rule 18 of Order 11 Code of Civil Procedure and the Judicial decisions this Court is of the view

that although it would not be proper to make any observation with regard to the necessity of inspection of documents sought by the petitioner no-2/plaintiff but at the same time it is incumbent upon the trial Court to consider and decide in an application made under Order 11 Rule 15 Code of Civil Procedure with a prayer to restrain a party from submitting any document in evidence where no compliance is made on the notice for inspection, as to whether such inspection is necessary or not. In the event Court holds that inspection is not necessary the application can be dismissed and on the other hand if the Court is of the view inspection is necessary Court may order inspection, and direct the party who defaulted in giving inspection to produce, the said documents for inspection. The Court may also impose costs upon the defaulting party. As Courts have power to decide in an application under Order 11 Rule 18 (1) as to whether there is any necessity of inspection before passing order of inspection, similarly while passing any restrain order preventing a party from producing any document in evidence where no compliance of an inspection notice is made Courts can decide in an application under Order 11 Rule 15 as to whether inspection is necessary. In the event Court is of the view that inspection was necessary and the party upon whom inspection notice was issued defaulted the Court upon hearing the party who has not complied the notice if satisfied that there was sufficient cause or excuse not to comply the notice the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit on the other hand if there was no sufficient cause in not complying the notice Courts may direct compliance of the same with costs.

Thus in such a case the Court may exercise power as provided in Rule 18 Order 11 CPC to order inspection, in deciding petition under Order 11 Rule 15 CPC.

As right to defend or prosecute a suit is a basic right litigants should be granted reasonable opportunity to produce documents as evidence to establish their right. Normally they should not be deprived of such right. Thus if there is non compliance with regard to inspection notice under Rule 15 Order 11 C.P.C necessary opportunity to comply the same should be given, on such terms as to costs, so that litigants are not deprived of their basic rights to prove their case in accordance with law.

In the instant matter the Learned Trial Court without addressing itself as to the necessity of production of documents for inspection or directing the opposite parties to show cause as to why documents were not produced for inspection went on to observe that the plaintiffs did not comply the stage and process as per Order XI Rule 15 CPC regarding inspection of documents when Learned Court by Order dated 23-11-2023, permitted inspection of documents on or before 16-12-2023. Thus the Order passed by Learned Trial Court cannot be sustained and the same should be set aside.

The matter should be remitted to the Learned Trial Court to reconsider and decide the application under Order 11 Rule 15 CPC filed by the petitioner no-2/plaintiff in accordance with law by a reasoned order.

Hence this Application under Article 227 of the Constitution of India stands allowed. Order dated 9th May 2024 passed by Learned Civil Judge (Junior Division) Additional Court at Asansol Paschim Bardhaman in Title Suit No. 130 of 2023 is set aside. The matter is remitted to the Learned Trial Court to reconsider the application under Order 11 Rule 15 CPC filed by the petitioner no-2/plaintiff in accordance with law upon permitting the opposite party/defendant to file objection to the said petition and upon hearing the parties and passing a reasoned order. Learned Trial Court is requested to decide the application at an early date preferably within a period of four weeks from the next date fixed.

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

(Biswaroop Chowdhury, J.)