



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
WRIT PETITION NO.528 OF 2019

PETITIONERS/ : 1 **Dinesh s/o Jagannathprasadji Khandelwal,**
 Ori. Plaintiffs.
 (On R. A.) aged 57 years, Occ. Proprietor of M/s.
 D. Khandelwal Steel Corporation (Dead)
Through L.R's

(Added as per Order
 dated 12.09.24 on CAW
 No.97/2023)

1. Smt. Asha wd/o Dinesh Khandelwal,
 Aged 58 years, Occ. Housewife,

2. Mahesh s/o Dinesh Khandelwal,
 Aged 30 years, Occ. Business,

3. Ku. Purva d/o Dinesh Khandelwal,
 Aged 26 years, Occ. Freelancer,

Nos.1 to 3, residents of Flat No.201, 2nd
 floor, Om Mansion, 158, Lendhra Park,
 Ramdaspath, Nagpur.

4. Sau. Priyanka w/o Rishabh Akhar,
 Aged 33 years, Occ. Housewife, Resident of
 D-25, Akar Marg, Bani Park, Jaipur (Raj.)

2. M/s. D. Khandelwal Steel Corporation,
 through its Proprietor Dinesh s/o
 Jagannathprasadji Khandelwal, aged 57
 years, Both R/o of 2nd Floor, Om Building,
 Besides Union Bank of India, Ghat Road
 Nagpur.

..VERSUS..

RESPONDENTS/ :
 Ori. Defendants.
 (On R. A.)

Gammon India Limited, through:

A. The Managing Director,

Gammon House, Veer Sawarkar Marg,
 Prabhadevi, Mumbai.

B. Gammon India Limited,

Through the Managing Director/The
 General Manager, G-55/56, Butibori,
 Nagpur. (Amended as per order dated 09.08.2019)

Mr S. B. Mohta, Advocate for Petitioners.
Mr K. R. Lule, Advocate for Respondents.

CORAM : **ANIL L. PANSARE, J.**

DATE : **2nd JANUARY, 2025.**

ORAL JUDGMENT

1. Heard.
2. Issue rule returnable forthwith. The learned counsel waives service of Rule on behalf of respondents. With consent of learned counsels for parties, the petition is taken up for final hearing.
3. The petitioner – original plaintiff is aggrieved by the order of rejection of application filed by him under Order 11 Rule 12 of the Code of Civil Procedure, 1908 (hereinafter referred to as, “the CPC”). The petitioner filed an application for discovery of documents which according to him must be in possession of the respondent – original defendant. The Trial Court *vide* order dated 02.01.2019 rejected the application on the ground of discovery/production of documents not necessary to decide the suit.

4. The petitioner filed a suit for recovery of amount with a specific pleading that he had supplied iron material to the respondent – Company. The goods were supplied under invoice dated 04.11.2014 and 05.11.2014. The petitioner filed thirteen documents in support of his claim which include the aforesaid two invoices. The other documents were delivery memos, lorry receipt, letter dated 10.08.2015 issued by petitioner to respondent, the purchase order etc. The transaction has been specifically denied by respondent through written statement so also were denied the documents filed by the petitioner.

5. In context with above, the petitioner made an attempt to reduce the time of trial by giving notice to admit documents under Order 12 Rule 2 of the CPC. The respondent maintained its stand and thus, denied these documents.

6. Sub Rule (2) of Rule 2-A of Order 12 provides that a party who unreasonably neglects or refuses to admit the document after the service on him of the notice to admit documents, the Court may direct him to pay costs to the other party by way of compensation.

7. This provision indicates importance of fair approach by the parties to the suit, more so if the transaction is a commercial transaction. The provision to compensate other party for unreasonable approach is a clear indication that it is obligatory on the part of the party called upon to admit documents to avoid unreasonable denial/refusal to admit the documents.

8. The refusal of application would require petitioner to prove the documents which are denied by the respondent despite issuing notice to admit documents. Rule 2 of Order 12 of the CPC provides that if the documents are refused, the costs of proving any such document shall be paid by the party refusing to admit the document. This provision if read with Sub Rule (2) of Rule 2-A of Order 12, if utilized properly, not only that the duration of trial will be reduced but also the party suffering from unreasonable refusal will, at least, get costs or compensation from opposite party.

9. Since the petitioner failed to get any relief under Order 12 Rule 2 of the CPC, he thought it proper to file an application for discovery of documents, which according to him will throw light on the subject matter of the suit. Accordingly, application

under Order 11 Rule 12 of the CPC was filed before the Trial Court seeking direction against the respondent to make a discovery on oath of the documents which, according to the petitioner must be in possession of respondent.

10. The learned counsel for petitioner has invited my attention to the judgment passed by the Hon'ble Supreme Court in the case of **Shri M. L. Sethi vs. Shri R. P. Kapur, AIR 1972 SC 2379**, wherein the Supreme Court has explained the scope of Order 11 Rule 12 in following manner :

“5. We think that the High Court was wrong in holding that since the application for discovery did not specify the documents sought to be discovered, the lower Court acted illegally in the exercise of its jurisdiction in ordering discovery. Generally speaking, a party is entitled to inspection of all documents which do not themselves constitute exclusively the other party's evidence of his case or title. If a party wants inspection of documents in the possession of the opposite party, he cannot inspect them unless the other party produces them. The party wanting inspection must, therefore, call upon the opposite party to produce the document. And how can a party do this unless he knows what documents are in the possession or power of the opposite party ? In other words, unless the party seeking discovery knows what are the documents in the possession or custody of the opposite party which would throw light upon the question in controversy, how is it possible for him to ask for discovery of specific documents ? Order 11, rule 12 provides :

"12. Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit: Provided that discovery shall not be ordered 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".

When the Court makes an order for discovery under the rule, the opposite party is bound to make an affidavit of documents and if he fails to do so, he will be subject to the penalties specified in Rule 21 of Order 11. An affidavit of documents shall set forth all the documents which are, or have been in his possession or power relating to the matter in question in the proceedings. And as to the documents which are not, but have been in his possession or power, he must state what has become of them and in whose possession they are, in order that the opposite party may be enabled to get production from the persons who have possession of them (see Form No. 5 in Appendix C of the Civil Procedure Code). After he has disclosed the documents by the affidavit, he may be required to produce for inspection such of the documents as he is in possession of and as are relevant.

6. The High Court was equally wrong in thinking that in passing the order for discovery, the trial Court acted illegally in the exercise of its jurisdiction as it deprived the respondent of his right to claim privilege for non-production of his pass book and personal accounts,

because the stage for claiming privilege had not yet been reached. That would be reached only when the affidavit of discovery is made. Order 11, Rule 13 provides that every affidavit of documents should specify which of the documents therein set forth the party objects to produce for inspection of the opposite party together with the grounds of objection.

Nor do we think that the High Court was right in holding that the documents ordered to be discovered were not relevant to the inquiry. The documents sought to be discovered need not be admissible in evidence in the enquiry or proceedings. It is sufficient if the documents would be relevant for the purpose of throwing light on the matter in controversy. Every document which will throw any light on the case is a document relating to a matter in dispute in the proceedings, though it might not be admissible in evidence. In other words, a document might be inadmissible in evidence yet it may contain information which may either directly or indirectly enable the party seeking discovery either to advance his case or damage the adversary's case or which may lead to a trail of enquiry which may have either of these two consequences. The word 'document' in this context includes anything that is written or printed, no matter what the material may be upon which the writing or printing is inserted or imprinted. We think that the documents of which the discovery was sought, would throw light on the means of the respondent to pay court fee and hence relevant."

11. As could be seen, unless the party seeking discovery is aware of the documents in the possession or custody of the opposite party which would throw light upon the question in controversy, it will not be possible for him to ask for discovery of specific documents. Accordingly, the petitioner has pleaded that

the documents must be in possession of respondent. On the point of right to claim privileges for non-production of documents, the Supreme Court has held that the said stage will come only when the affidavit of discovery is made in accordance with Order 11 Rule 13, by which the opposite party may admit availability of documents, but object to produce for inspection on various grounds. As regards relevancy of document, the document may not be admissible but may throw light on the matter in controversy. In such an eventuality, where the document is inadmissible in evidence, the party seeking discovery on the basis of document discovered, if throws light on the subject matter of the suit, will be enable to advance his case or damage the adversary's case.

12. The Trial Court was, thus, expected to entertain the application in light of the aforesaid background. It has, however, proceeded on the pretext that the petitioner is calling upon the respondent to produce the documents and accordingly rendered a finding in paragraph four of its order that the Court cannot compel production of document which are against the interest of party. This finding goes completely contrary to what has been held by the Supreme Court in *M. L. Sethi's* case. As stated, the

respondent may admit availability of documents but may refuse to produce the same for inspection on legitimate grounds. The Trial Court by refusing directions of documents, in a way, has deprived the petitioner to get inspection of documents and further to advance his case in a manner that would assist the Court, particularly if the documents sought to be discovered would throw light on subject matter of the suit.

13. The petitioner has filed a suit for recovery on the basis of certain documents which are denied by the respondent. He intends to have inspection of document which includes the sales tax and value added tax returns filed by the respondent for the concerned period i.e. Financial Year 2014-15. He, further, intends to have inspection of documents like purchase order register/books, goods purchase register/book, stock register/book, get entry register/book, store inward register/receipt as well as Bank Account(s)/Statements as also inward/outward correspondence register. The respondent by filing reply has not really denied the existence of documents but has said that the documents requested are very broad in nature and contains broad range of information and that it will infringe upon right of privacy of the respondent.

14. Thus, the respondent has not denied the existence of documents. If that be so, the documents sought to be discovered for inspection, to my mind, may throw light upon the dispute. The petitioner has supplied iron and steel, light and heavy section structural steel. The bill raised by the petitioner was with sales/value added tax. The returns filed by the respondent would definitely reflect this invoice/bill in order to seek set off of sales/value added tax. The other documents are also capable of throwing light on the subject matter of the suit. The infringement of privacy could be dealt with at the stage of production of documents.

15. The counsel for respondent submits that the application under Order 11 Rule 12 ought to be filed before framing issues. He submits that the Civil Manual in Chapter VI deals with the matters preliminary to the settlement of issues and provide that the Court may ascertain what is necessary in order to frame issues by means of interrogatories and the discovery of inspection of documents under Order 11, Order 12 and Order 13.

16. To my mind, the aforesaid provisions in Civil Manual will not supersede the provisions of the CPC in as much as, the

provisions in Civil Manual are made to facilitate the Court and the parties to follow a stage-wise procedure in a suit. That by itself will not bar filing application for discovery of documents subsequent to framing issues, though it would be advisable to invoke these provisions before framing issues.

17. Put altogether, the Trial Court failed to consider the application on the touch stone of law laid down by the Hon'ble Supreme Court as also the purpose for which the aforesaid provisions are made and thus committed error of law.

18. The writ petition is accordingly **allowed**. The impugned order dated 02.01.2019 passed by the Joint Civil Judge Senior Division, Nagpur in Special Civil Suit No.180 of 2016 is hereby quashed and set aside. The application at Exhibit – 29 is allowed. The respondent shall submit affidavit of documents in accordance with Order 11 Rule 13 of the CPC. Rule is made absolute in above terms. No order as to costs.

19. The writ petition is disposed of accordingly.

(ANIL L. PANSARE, J.)