

Jamamuddin Vs. Shri Ram Chits Pvt. Ltd. Rep. by Its Foreman/Manager and ors.

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Court : Andhra Pradesh

Decided On : Jun-12-2009

Reported in : 2009(5)ALT177

Judge : P.S. Narayana, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151 - Order 11, Rules 12, 13 and 21; [Constitution of India](#) - Article 227

Appeal No. : C.R.P. No. 1378 of 2009

Appellant : Jamamuddin

Respondent : Shri Ram Chits Pvt. Ltd. Rep. by Its Foreman/Manager and ors.

Advocate for Def. : K. Maheswara Rao, Adv. for Respondent No. 1

Advocate for Pet/Ap. : B. Venkateswara Rao, Adv. for M.V. Durga Prasad, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

P.S. Narayana, J.

1. Heard Sri B. Venkateswara Rao, the learned Counsel representing Sri M.V. Durga Prasad, the learned Counsel for the revision petitioner and Sri Kuncheam Maheswara Rao, the learned Counsel representing the first respondent. The other respondents i.e., respondents 2, 3 and 4 are shown as not necessary parties in the Civil Revision Petition.

2. This Court ordered notice before admission on 31.03.2009 and granted interim stay for a limited period, which was further extended for a further limited period.

3. Sri B. Venkateswara Rao, the learned Counsel representing Sri M.V. Durga Prasad, the learned Counsel for the revision petitionerfirst defendant, would maintain that the learned Senior Civil Judge, Adoni, had not appreciated the respective stands taken by the parties in their pleadings properly while considering the application I.A. No. 729 of 2008 in O.S. No. 9 of 2005 on the file of the Senior Civil Judge, Adoni, filed under Order XI Rule 12 read with Section 151 of the Code of Civil Procedure praying for direction to the plaintiff to produce the documents specified in the petition schedule. The learned Counsel also would point out that the first respondent-company itself agreed to produce document Nos. 1, 2 and 7 in the counter filed before the learned Senior Civil Judge, Adoni and the learned Judge on the ground that document Nos. 1 to 6 are only formal in nature, directed production of document No. 7 only and this approach adopted by the learned Judge cannot be sustained. The learned Counsel also would maintain that the admissibility or otherwise of these documents which may be produced, may have to be decided at an appropriate stage. The learned Counsel also would maintain that even if the nature of the suit and the nature of the documents to be taken into consideration, all these documents are essential and at any rate, though document Nos. 3 and 4 are to be considered as formal in nature, at least the other document Nos. 1, 2, 5, 6 and 7 being highly essential, appropriate directions are to be given for production of these documents. The learned Counsel also explained the scope and ambit of Order XI Rule 12 of the Code of Civil Procedure (hereinafter in short referred to as 'the Code'), for the purpose of convenience.

4. Per contra, Sri Kuncheam Maheswara Rao, the learned Counsel representing the first respondent-plaintiff-Shri Ram Chits Pvt Ltd., would maintain that it is no

doubt true that in the counter, the company had expressed the willingness to produce document Nos. 1, 2 and 7 but, however, the learned Judge after recording certain reasons came to the conclusion that since document Nos. 1 to 6 are formal in nature and do not throw any light so as to decide the questions in controversy, directed the production of document No. 7 only. The learned Counsel also would maintain that the learned Judge recorded reasons and exercised the discretion properly while directing the production of document No. 7 only and even otherwise in the light of the stand taken by the first respondent/plaintiff-company in the counter, the first respondent/plaintiff company even now is prepared to produce document Nos. 1 and 2 also along with document No. 7, but however, document Nos. 1 and 2 may not throw much light on the questions in controversy. Hence, the learned Counsel would maintain that in the light of the clear language employed in Order XI Rule 12 of the Code, and inasmuch the learned Senior Civil Judge, Adoni exercised the discretion after recording reasons in proper perspective, this is not a fit matter to be interfered with under Article 227 of the [Constitution of India](#).

5. Heard the learned counsel.

6. Perused the respective pleadings of the parties, the averments made in the affidavit filed in support of the application and also the stand taken in the counter filed by the first respondent/plaintiff.

7. This Civil Revision Petition is filed by the first petitioner in I.A. No. 729 of 2008 in O.S. No. 9 of 2005 on the file of the Senior Civil Judge, Adoni, aggrieved by the order, dated 28.01.2001, passed therein.

8. At the outset, it may be stated that though the said application had been filed by four petitioners, the present civil revision petition had been preferred under Article 227 of the [Constitution of India](#) by the first petitioner only and the other petitioners are shown as respondents 2, 3 and 4, no doubt, specified as not necessary parties to the civil revision petition. The said application was filed under Order XI Rule 12 read with Section 151 of the Code praying for direction to the first respondent/plaintiff to produce the documents specified hereunder:

1. Bye law of Chit registered with Registrar of Chits
2. Certificate of commencement of Chit issued by the Registrar of Chits, Kurnool.
3. Memorandum and Articles of Association of the plaintiff Company
4. Names and Addresses of all the members in the Chit Group.
5. Register in Form-VII A prescribed by the Registrar of Chits, showing the transaction by each and every member of the Chit Group.
6. Bid auction amount of each Chit from 1st month of the chit till date.
7. Up-to-date State of Account in respect of the Subscriber/Defendant No. 1 (Jamaluddin).
9. In the affidavit filed in support of the application, the petitioner and respondents 2, 3 and 4 in the civil revision petition i.e., the petitioners in the application and the defendants in the suit had averred that to know the legality of the Chit fund business the documents specified are to be verified and, hence, suitable directions may be given for production of the same for inspection and verification.
10. The first respondent herein, the plaintiff in the suit filed the counter denying the allegations taking a specific stand that only with a view to prolong the suit, this application had been thought of. It is stated that document No. 3 is in the custody of the Head Office and document Nos. 4 to 6 are unconcerned with the facts of the case and if document Nos. 1, 2 and 7 are necessary, the plaintiff will produce the same for inspection.
11. The learned Judge having formulated the point for consideration at para 4 of the impugned order, recorded reasons as hereunder:

The petitioners who are the defendants 1 and 3 to 5 in the suit filed by the respondent/plaintiff i.e., Shri Ram Chits Private Ltd., have filed the present petition summoning the documents mentioned in the petition schedule. The first document is Bye-law of the Chit registered with the Registrar of Chits, (2) Certificate and Articles of Association of the Plaintiff Company, (3) Memorandum and Articles of

Association of the Plaintiff Company, (4) Names and Addresses of all the members in the Chit Group, (5) Register in Form-VII A prescribed by the Registrar of Chits, showing the transaction by each and every member of the Chit Group. (6) Bid auction amount of each chit from 1st month of the chit till date and (7) up to date Statement of Account in respect of the subscriber/defendant No. 1 (Jamaluddin). The documents 1 to 6 are the only formal documents with relate to which the petitioners/defendants cannot espouse any grounds. The only document with relate to which the petitioners can espouse their grouse is document No. 7 i.e., State of Account, on the basis of which the suit is filed. Thus, the documents 1 to 6 are not necessary for progress of the case. Further, the respondent is directed to file copy of document No. 7 i.e., Statement of Account pertaining to the transaction made by D.1 as on today.

12. The reasons specified by the learned Senior Civil Judge, Adoni being self-explanatory, the same need not be discussed in further elaboration.

13. Order XI Rule 12 of the Code dealing with application for discovery of documents specifies as hereunder:

Application for discovery of documents: 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.

14. The said provision dealing with discovery of documents permits or enables any party to the suit to apply to the Court for suitable directions directing the other party to make discovery on oath of the documents, which are or have been in the

possession of such party.

15. In *M.L. Sethi v. R.P. Kapoor* : AIR 1972 SC 2379 : (1972) 2 SCC 427, the Apex Court observed as follows:

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.

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 state 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.

16. In *Ashreddy v. Venkatreddy* 1958 ALT 521 : 1958 (1) A.W.R. 505 : AIR 1958 A.P. 450 (D.B.), the Division Bench of A.P. High Court observed:

Apart from that, a perusal of Order 11, Rule 12 would show that mere filing of an application thereunder does not automatically cast an obligation of any party to make the discovery. It is for the Court to see whether it would 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. The very use of the word 'discretion' in the rule implies a duty on the part of the Court to apply its mind and to pass an order on sound judicial principles and not arbitrary and capriciously.

Even if the order of the Subordinate Judge for clarification be regarded as one under Rule 12 of Order 11, that order would seem to suffer from the defect that he has given no reasons for exercising his discretion in favour of the applicant after discussing the reasons given by him for calling upon the appellant to discover documents. It was highly objectionable on the part of the Subordinate Judge to have suggested to the application to file an application under Order 11, Rule 21 to have the suit dismissed. Such an application is a matter of choice with the applicant and the lower Court ought not to have taken the role of an adviser.

17. In *Halsbury's Laws of England* (4th Edition) Vol.13, P.55-56, Paras 69-70 it was observed:

Discovery and production of documents may successfully be resisted on one or more of the under noted grounds:

(i) Documents within legal or professional privilege;

- (ii) Documents tending to criminate a party or expose him to forfeiture;
- (iii) Documents protected by public policy or production whereof is injurious to public interest;
- (iv) Documents not in the sole possession of the party giving discovery;
- (v) Documents relating solely to the case of the party giving discovery;
- (vi) Documents in the possession of the party as an agent or a representative of another;
- (vii) Documents disclosing evidence

18. On a careful reading of the language of the provision, which had been already specified supra, and also the nature of the reasons recorded by the learned Judge, this Court is thoroughly satisfied that the impugned order under challenge does not suffer from any illegality warranting interference under Article 227 of the [Constitution of India](#).

19. It is no doubt true that relating to the production of document Nos. 1 and 2 apart from document No. 7, the first respondent/plaintiff-company reported no objection by way of counter. However, the learned Judge after recording reasons, was of the opinion that document Nos. 1 and 2 apart from document Nos. 3, 4, 5 and 6 are also formal in nature and issued a direction for production of document No. 7 only. This judicial discretion, in the considered opinion of this Court, had been exercised by the learned Judge in accordance with law. Hence, the order under challenge does not suffer from any legal infirmity whatsoever warranting interference under Article 227 of the [Constitution of India](#).

20. Accordingly, the Civil Revision Petition shall stand dismissed at the stage of admission. No order as to costs.