

Cj International Vs. Ndmc

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Court : Delhi

Decided On : Sep-27-2002

Reported in : 102(2003)DLT589

Judge : S. Mukerjee, J.

Acts : Code of Civil Procedure (CPC) - Order 11, Rules 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21

Appeal No. : IA No. 6347/2002 in Suit No. 610/2000

Appellant : Cj International

Respondent : Ndmc

Advocate for Def. : Arvind Shah, Adv.

Advocate for Pet/Ap. : A.S. Chandiok, Sr. Adv.,; Prashant Pakhiddey and; Manmeet A

Judgement :

S. Mukerjee, J.

1. This is an application praying for recalling of the order dated 7.3.2002 passed on application (I.A. No. 4881/00) which reads as under:--

'This is an application under Order 11 Rule 12 and 14 CPC. The prayer is that the defendant No. 1 directed to discover all documents, records etc. in their possession relating to the subject matter of the instant suit. Let the necessary affidavit be filed by defendant No. 1 within four weeks.

List this application on 11th July, 2002.'

2. This order was passed on application of the plaintiff under Order 11 rules 12 & 14 of the CPC.

3. The submission of the learned counsel for the defendant/ applicant is that on 7.3.2002 the application was not properly considered and the affidavit directed/called upon to be filed should be understood to be in the form of reply to the application and that is why the application was directed to be again listed on 11.7.2002.

4. Learned counsel for the defendant/ applicant has relied upon the judgment of the Apex Court in M.L. Sethi v. R.P. Kapur; : [1973]1SCR697 and the judgment of the Orissa High Court in M/s J.S. Construction Pvt. Ltd. v. Damodar Rout : AIR1987 Ori207 .

5. In the judgment of the Supreme Court it has been categorically held that once an application for discovery is made, the direction for requiring affidavit of discovery, is to be made. The affidavit to be filed is as per prescribed form No. 5 of Appendix-C to the Code of Civil Procedure which lays down the five separate items which have to be covered by the affidavit to be filed and the same included the objection regarding production of the documents Along with grounds of objection.

6. It would follow from the ratio of the Supreme Court decision that the stage of objection of the defendant would arise only when by and upon the affidavit of discovery being made.

7. As regards the other cited decision of the Orissa High Court, in the cited case, the application under Order 11 Rule 12 & 14, had been filed even before the written statement had come on record. As such the application was pre-mature

and also the schedule of documents contained total 11 items, out of which (5), (6), (9) and (11) were clearly of vague nature.

8. Furthermore, the applicant/ defendant before the trial court in the Orissa case, did not even appear before the High Court to substantiate his case for discovery or production.

9. No doubt it has been held there that the discretion vested in the Court under the provisions of Code of Civil Procedure, should be carefully exercised but that by itself does not imply that an application should be subjected to elaborate proceedings by way of issuing notice calling for reply and passing off a detailed order with reasons.

10. I feel that since Senior Counsel of both sides have argued the matter in some detail, and occasion arises time and again to consider this aspect, as such some observations may be appropriate in the context of the legal provisions on the point:--

i) It is more or less the practice for this Court, to dispose of applications under Order 11 Rules 12 & 14, where document appear prima facie to be relevant documents, without a calling for any reply and merely by way of a direction to the opposite party to file affidavit as contemplated by Order 11 Rule 13 CPC.

ii) Furthermore as per Order 11 Rule 15 the direction for production of documents for inspection has to be in terms of the prescribed Form No. 6 in Appendix-C, and a persual of the format thereof indicates that the said direction for production, is to be passed after reading the affidavit which has been filed. The 'affidavit', can only mean the affidavit contemplated by Order 11 Rule 13 CPC;

iii) In response to the notice to produce documents refered to in Order XI Rule 16, the opposite party may either grant the inspection of all or of a part of the documents or convey, with grounds, its objections in terms of Form No. 8 as referred to in Order 11 Rule 17 CPC;

iv) Thereafter in terms of Order XI Rules 18 & 19 of the CPC, the Court may order inspection or direct supply of verified copies of the records;

v) In Rule 21 of Order XI, it is provided that in case any questions in dispute to the suit, are required to be decided first, then the orders for discovery or inspection can be kept in abeyance;

vi) In Rule 21 of Order XI, the consequences of non-compliance with an order for discovery or inspection, have been indicated and if the defaulting party is the plaintiff, his suit is liable to be dismissed while if the defaulting party be the defendant, the defense may be struck off;

11. In the Scheme of the provisions outlined above, it would follow that upon an application being filed under Order 11 Rule 12 simplicitor, or under Order 11 Rules 12 & 14 CPC read together, the Court upon being prima facie satisfied that the documents are relevant and will throw light on the case, will thereupon issue an order calling upon the opposite party to file an affidavit in terms of Form-5 of Appendix-C of the Code of Civil Procedure. In case the application were to be under both Rules 12 & 14, then that disposal with directions to file affidavit, itself implies that the relief of production, has not be granted at that stage and the only direction granted is for discovery.

12. After perusal of the affidavit, the plaintiff may seek inspection or ask for verified copies to be supplied or production to be ordered, which would then be dealt with in accordance with law by further consideration and orders of the Court.

13. In view of the above, the Order dated 7.3.2002 being an order of discovery only, to which the defendant could well have filed an affidavit in terms of Rule 13 of the said order setting out defendants objections as well. No order for production having been passed till date. As such it is not open to the defendant to claim any grievance in relation to the said order. The defendant will be entitled to take all objections in the affidavit to be filed.

14. In the above circumstances, the application (IA. No. 6347/2002), is dismissed. The defendant is however, granted further time of four weeks to file the affidavit, since the defendant had preferred this application for modification, and hearing/disposal of the same, has consumed the time-period till date, and it would thereforee be in the interest of justice not to deny one further, last and final

opportunity to the defendant to file affidavit in terms of Order 11 Rule 13 CPC, so that the defendant may not be visited with the consequences of default as envisaged under Order 11 Rule 21 CPC.

15. With the above observations, the application stands disposed of, but with no order as to costs. List for directions on 4.12.02.

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