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Court : Rajasthan

Decided On : Jan-29-2008

Reported in : 2008(2)WLN288

Judge : M.N. Bhandari, J.

Appeal No. : S.B. Civil Writ Petition No. 8746/2007

Appellant : Dharmendra Kumar Thawaria

Respondent : Additional District Judge (Fast Track) No. 2 and anr.

Judgement :

M.N. Bhandari, J.

1. The present writ petition has been filed to challenge the order dt. 20.09.2007.
2. Learned Counsel for the petitioner submits that application moved by the petitioner under Order 6 Rule 17 read with Section 151 C.P.C. was rejected by the Court below though not only the amendment but even document regarding receipt of advance of Rs. 70,000/- by the non-petitioner was material in that regard and even necessary averments were also made in the written statement. During the course of arguments learned Counsel for the petitioner submits that even if

amendment in written statement is not allowed, then also the document showing receipt of advance of Rs. 70,000/- may be allowed to be taken on record, thus the present writ plaintiff has been pressed mainly for taking the aforesaid document on record.

3. Learned Counsel for the respondent on the other hand submits that the document showing receipt of advance of Rs. 70,000/- is being produced contrary to the statement of the defendant petitioner himself inasmuch as in his statement/cross-examination dt. 12.05.2005, it was admitted by the petitioner that he is not having receipt or has not written advance of receipt of Rs. 70,000/-, as an advance. Referring to the statement aforesaid, learned Counsel for the respondent prayed that when the petitioner himself denied existing of any such document in his statement recorded in the year 2005 then now the document could come in effect for placing it on record. The other argument of the learned Counsel for the respondent is that the document has been placed almost at the fag end of the proceedings because evidence of the parties were closed and the matter was pending for final arguments and decision. It was, therefore, prayed that the order passed by the Court below to be maintained.

4. I have considered the submissions of both the parties and gone through the order impugned. Perusing of the order reveals that the Court below had considered all the factual and legal aspects in detail and in that regard the Court below has considered even the statement of the petitioner as also the pleading in written statement and other relevant material and taking note of the facts including the statement of the petitioner, denying existing of any written or other document in regard to the receipt of Rs. 70,000/- as advance, thus Court below dismissed the application. It was also noticed that the application was filed by the petitioner at the time when the matter was kept for final hearing and disposal.

5. Looking to the aforesaid facts, I do not find any error in the order passed by the Court below inasmuch as not only that the document referred is being filed at a very belated stage but even the existence of the said document was denied by the petitioner himself in his cross-examination dt. 12.05.2005.

6. In view of the above, the writ petition being devoid of merit hence same is dismissed.

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