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**Jogen Chandra Das Vs. Sub-divisional Controller of Food and Supplies and ors.**

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**SooperKanoon Citation : [sooperkanoon.com/867075](http://sooperkanoon.com/867075)**

**Court : Kolkata**

**Decided On : Feb-19-2004**

**Reported in : 2004(3)CHN160**

**Judge : S.P. Talukdar, J.**

**Acts : [Specific Relief Act, 1963](#) - Section 34; ;[Constitution of India](#) - Article 227; ;  
[Code of Civil Procedure \(CPC\) , 1908](#) - Section 151 - Order 39, Rules 1 and 2 -  
Order 41, Rule 27**

**Appeal No. : C.O. No. 1957 of 2001**

**Appellant : Jogen Chandra Das**

**Respondent : Sub-divisional Controller of Food and Supplies and ors.**

**Advocate for Pet/Ap. : Indranil Bhattacharyya, Adv.;Subhas Chandra Bose, Adv.**

**Judgement :**

**S.P. Talukdar, J.**

1. The present case arises out of an application under Article 227 of the [Constitution of India](#) and it is directed against the order No. 19 dated 5th May, 2001 passed by the learned Judge-cum-Additional Sessions Judge, Cooch Bihar

in Misc. Appeal No. 11 of 1999 arising out of Title Suit No. 17 of 1997 pending before the learned Court of Munsif, Dinhata, Cooch Bihar.

2. The backdrop of the present case may briefly be stated as follows :

The petitioner, as plaintiff, filed a suit for declaration and permanent injunction. The basis of his claim was that he applied for M. R. Dealership on 18th November, 1992 to the Sub-Divisional Controller, Food and Supplies Department, Cooch Bihar and the said authority made proper enquiry through the officials of Dinhata in respect of all the applicants including the petitioner/plaintiff. On enquiry the officials of the said defendant No. 1 found that the plaintiff is the best and fittest candidate amongst all. On the basis of such enquiry report, the plaintiff sought for declaration that he is entitled to be appointed as M. R. Dealer at Petla Adabari at Dinhata as well as declaration that the defendant Nos. 5 and 6 in the suit are entitled to be appointed as M. R. Dealers for the said area. In the said suit the present petitioner as plaintiff also prayed for permanent injunction restraining the defendants from appointing the defendant Nos. 5 and 6 as M. R. Dealers for the said area as well as for other reliefs. In response to an application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure filed by the present petitioner, the learned Trial Court refused to grant interim injunction in favour of the present petitioner/plaintiff.

3. Being aggrieved by and dissatisfied with such order of refusal the petitioner/plaintiff as appellant filed the aforesaid Misc. Appeal being 11 of 1999. At the time of hearing of the said misc. appeal the present plaintiff/ petitioner filed an application dated 9th January, 2001 before the learned Appellate Court praying for calling for a certain document dated 7th April, 1999 from the Cooch Bihar Zilla Parishad. The learned Appellate Court after due consideration of all relevant materials rejected the said application dated 9th January, 2001. The present application under Article 227 of the [Constitution of India](#) has been filed against the said order of rejection dated 5th May, 2001.

4. The learned Counsel for the petitioner referring to Order 41 Rule 27 of the Code of Civil Procedure submits that it was not possible for the petitioner to produce such document at the time of hearing of the injunction matter and as such he was

left with no choice but to file the aforesaid application dated 9th January, 2001 calling for the said document dated 7th April, 1999. According to the learned Counsel for the petitioner, such document is vital in nature and it need be taken into consideration for effective adjudication of the dispute. The learned Court, however, rejected the said application on the ground that such document was admittedly not in existence at the time of filing of the suit not at the time of hearing of the injunction application. The learned Appellate Court held that there was no scope for the learned Trial Court to apply its mind to such a document which was admittedly not in existence. On that ground alone, the learned Appellate Court refused to call for the said document.

5. Learned Counsel for the opposite party/State of West Bengal referring to Section 34 of the Specific Relief Act submits that the learned Appellate Court has been perfectly justified in rejecting the application praying for calling for a document dated 7th April, 1999. He further submits that such a document if allowed to be introduced, will change the complexion of the suit and will attract fresh cause of action which cannot be permitted in law.

6. After careful consideration of the relevant facts and materials I think the plaintiff filed the said suit being aggrieved for not being given appointment as M. R. Dealer in respect of a certain area in spite of the fact that he was having the official enquiry report in his favour. His further grievance is that the defendant Nos. 5 and 6 have been favoured with such appointment though there is no such recommendation in their favour. Thus, in essence the plaintiff's grievance relates to refusal of being appointed as M.R. Dealer in respect of a certain area. No doubt, the recommendation as has been sought for to be relied upon by the present petitioner is based on the document dated 7th April, 1999, There is no doubt, that it was not in existence at the time of filing of the suit and the learned Trial Court did not have any chance to rely upon such document. But I fail to share the submission made by the learned Counsel for the opposite party State of West Bengal that introduction of such a document will change the nature, scope and object of the suit. In my opinion, it does not appear to be in the nature of introduction of a fresh cause of action. How far such a document will ultimately act in favour of the present petitioner/plaintiff or how far it can be allowed to be relied

upon is a matter to be decided by the learned Trial Court.

7. After considering all such facts and circumstances of the case, I am inclined to hold that interest of justice demands that the present petitioner/plaintiff should be given a chance to rely upon such a document but certainly to be done before the learned Trial Court which initially refused to grant an order of interim injunction. It is for the petitioner/plaintiff to decide as to whether he will seek amendment of the plaint or not in order to allow him to introduce such a document. But, in my opinion, the learned Appellate Judge did not have any chance to apply its mind to such a document. In such circumstances, the petitioner/plaintiff be given liberty to file an application before the learned Trial Court seeking introduction of such document and it is for the learned Trial Court to consider the said application and decide the same after hearing both parties and of course after giving opportunity to the present opposite party/ State of West Bengal to file a written objection, if any, in that regard. It appears that after due consideration of all the relevant facts and materials, in absence of such a document, it will not be possible to adjudicate the matter effectively and properly.

8. With such observations, the instant application under Article 227 of the [Constitution of India](#) is disposed of. The impugned order dated 5th May, 2001 stands set aside.

9. The petitioner plaintiff will be at liberty to file an application in the light of the observations made in the body of the judgment and if such application is filed, the learned Trial Court will give a chance to the opposite party/State of West Bengal to file a written objection to that, if any, to decide the said application after giving both parties to advance their arguments.

10. There will be no order as to costs.

11. It may, however, be made clear that I have not gone into the merits of the respective contentions of the parties and the matter has been left open to the learned Trial Court to decide the same.

12. Let urgent xerox certified copy of this order be given to the learned Counsel for the parties forthwith.

**S. P. Talukdar, J.**

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