

(2010) 08 DEL CK 0256

In the Delhi High Court

Case No : CM (M) No. 1085 of 2010 and CM Application No. 15290 of 2010

Aligarh Roller Flour Mills Pvt. Ltd. and Ram Pal Juneja,
Managing Director, Aligarh Roller Flour Mills Pvt. Ltd.

APPELLANT

Vs

Shri Parvinder Khanna, Proprietor Ess Kay Traders

RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 17, Order 8 Rule 1A, 151
Constitution of India, 1950 — Article 226, 227
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2010) 08 DEL CK 0256

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Sandeep Garg, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—This petition under Article 227 of the Constitution of India has been filed challenging order dated 5th February, 2010 passed by Additional District Judge, Delhi, vide which application of petitioner under Order 8 Rule 1A read with Order 18 Rule 17 and Section 151 of CPC (for short referred to as "Code") was dismissed.

2. In 2003, respondent filed a suit under Order 37 of the Code for recovery of Rs. 4,19,862.50/- against petitioner. On 22nd February, 2008, petitioner filed the application in question before trial court when part final arguments were being heard.

3. It is contended by Learned Counsel that while searching certain old documents petitioner could lay hand on certain documents and papers relating to the present case which would prove his case as mentioned in the counter claim. These documents are very material and important to prove the case of petitioner. Moreover, these documents can only be proved by leading additional evidence and as such these documents ought to have been taken on record by the trial

Court.

4. Present petition has been filed under Article 227 of the Constitution of India. It is well settled that jurisdiction of this Court under this Article is limited.

5. In *Shamshad Ahmad and Ors. v. Tilak Raj Bajaj (Deceased) thru. Lrs and Ors.* 152 (2008) DLT 301 (SC) , Supreme Court observed;

Though powers of a High Court under Articles 226 and 227 are very wide and extensive over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be exercised within the limits of law. The power is supervisory in nature. The High Court does not act as a Court of Appeal or a Court of Error. It can neither review nor reappreciate, nor re-weigh the evidence upon which determination of a subordinate Court or inferior Tribunal purports to be based or to correct errors of fact or even of law and to substitute its own decision for that of the inferior court or Tribunal. The powers are required to be exercised most sparingly and only in appropriate cases in order to keep the subordinate Courts and inferior Tribunals within the limits of law.

6. In light of principles laid down in the above decision, it is to be seen as to whether present petition under Article 227 of the Constitution of India against impugned order is maintainable or not.

7. As already stated above, application seeking production of additional documents as well as for additional evidence was filed at the stage of final arguments. The only intention of petitioner is just to delay the trial as apparent from the findings of the trial Court which read as under:

As a matter of record the present application has been filed by the defendant at the time of final arguments and the record further reveals that matter was fixed for final arguments on 28.03.07 and part arguments were heard and present application has been filed on 22.02.2008 i.e more or less after the gap of around one year.

The defendant intend to bring on record some bilties of the different transports along with documents pertaining to complaint u/s 138 N.I. Act and some documents that the orders were placed by the defendant.

File perused. Cross examination of DW1 also perused. During cross examination the specific questions qua the bilty were put to the witness. Even on 26.09.06 further cross examination of DW1 Sh. Raj Pal Juneja was deferred at the request of the witness on the ground that he intend to check the matter pertaining to 138 N.I. Act. Cross examination of DW1 reveals that this witness was having knowledge of the bilties and the documents pertaining to complaint u/s 138 N.I. Act but there is nothing in the written statement that defendant has pleaded about the existence of these documents. The conduct of the defendant reveals that application has been moved by the defendant at this belated stage after thought and in case the application is allowed it may amount to abuse the process of Court. Application stands dismissed with cost of Rs. 1000/-.

8. In entire application, it is nowhere stated as to on which date petitioners were able to lay hand on the documents which they wanted to place on record. During course of arguments, Learned Counsel for petitioner admitted that written statement was filed in the year 2003, whereas evidence was completed in 2006.

9. In *Madanlal Vs. Shyamlal*, Supreme court observed;

Documents not produced at the appropriate stage shall not be received by the Court unless good cause is shown.

10. In *Vadiraj Naggapa Vernekar (D) Through Lrs. Vs. Sharad Chand Prabhakar Gogate*, it was held;

The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.

It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination. Of course, if the evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, it is always within the discretion of the Trial Court to permit recall of such a witness for re-examination-in-chief with permission to the defendants to cross-examine the witness thereafter. There is nothing to indicate that such is the situation in the present case.

11. Suit filed by respondent for recovery of more than Rs. 4 lacs is pending trial for over seven years and petitioners are creating hurdle in the final disposal of the suit, as final arguments were heard in part in year 2007.

12. The only purpose of filing of present petition is just to delay the trial. As apparent from record present petition was filed only on 21st August, 2010 whereas, impugned order was passed on 5th February, 2010, that is, more than six and half months after passing of the impugned order. This clearly shows that the intention of petitioners is only to delay the trial.

13. It is well settled that bogus and frivolous applications being filed deliberately by the litigants in order to delay the trial, should be dealt with heavy hands. No leniency should be shown to those litigants who in order to cover up their own inefficiency and negligent act try to cause obstruction in the administration of justice. Strong message is required to be sent to those litigants who are in the habit of challenging each and every order of the trial court even if the same is based on sound reasoning and also to those litigants who chose to file merit-less applications.

14. Since, there is no infirmity or illegality in the impugned order, the present petition under Article 227 of the Constitution of India is not maintainable.

15. The present petition being most bogus and frivolous one, is dismissed with cost of Rs. 40,000/- (Rupees forty thousand only).

16. Petitioner is directed to deposit the cost with Registrar General of this Court by way of cross cheque, within four weeks from today.

17. List for compliance on 4th October, 2010.

CM Appl. No. 15290/2010 (stay)

18. Dismissed.