(1994) 02 DEL CK 0050

In the Delhi High Court

Case No : Interim Application No. 9642 of 1992 and Suit No. 170 of 1983

Beer Singh and Others APPELLANT

Vs

Sher Singh RESPONDENT

Date of Decision : 02-02-1994

Acts Referred:

Citation : (1994) 2 AD 665 : (1994) 53 DLT 598 : (1994) 28 DRJ 457 : (1994) 2 ILR Delhi 339 : (1994) RLR 153

Hon'ble Judges : J.K. Mehra, J

Bench : Single Bench

Advocate : P.K. Seth and G.N. Aggarwal, for the Appellant;

Judgement

J.K. Mehra, J.

(1) This is an application under Order 7 Rules 11 and 17 of the CPC praying that the suit of the plaintiff may be rejected being not maintainable and for non-compliance of the provisions or Order 7 Rule 17 of the CPC.

(2) This is a suit for recovery of money which is stated to have been paid to the defendants out of various accounts as set out in para 9 of the plaint. The plaint was accompanying by the documents which included translations of the Statements of Account carrying a certificate at the foot of the statements that these are the true translations of the accounts maintained by the plaintiff in Hindi. Order 7 Rule 17 provides- R.17. Production of shop-book - (1) Save in so far as is otherwise provided by the Bankers'' Books Evidence Act, 1891 (18 of 1891), where the documents on which the plaintiff sues is an entry in a shop-book or other account in his possession or power, the plaintiff shall produce the book or account at time of filing the plaint, together with a copy of the entry on which he relies. (2) Original entry to be marked and returned - The Court, or such officer as it appoints in this behalf, shall for with mark the document for the purpose of identification; and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the

plaintiff and cause the copy to be filed."

(3) As Explanation to this rule was added by Punjab Amendment which is applicable to Delhi, it provides as under:-

"EXPLANATION- When a shop book or other account written in a language other than English or the language of the court is provided with a translation or transliteration of the relevant entry, the party producing it shall not be required to present a separate affidavit as to the correctness of the translation or transliteration, but shall add a certificate on the document itself, that it is a full and true translation or transliteration of the original entry, and no examination or comparison by the Ministerial Officer shall be required except by a Special Order of the court. "

(4) The statements of accounts which are stated to be English Translation of the accounts, mentioned in Hindi by the defendant, were admitted/denied by the defendants without any demur and it was at the stage of evidence that the present application was moved. I find that the requisite translations of the accounts were filed along with the plaint on 6th December 1982. Written statement to the plaint was filed only on 3.4.84. In written statement no such objection has been raised. Replication was filed on 2.5.84. Issues were framed one and a half year latter i.e. on 7.11.85. Even at that stage, no such objection was raised by the defendants, It was only when the statement of Public Witness .1 was being recorded and the statements of account were sought to be proved with the account books that the defendants raised the objection and moved the formal application in July 1992.

(5) This application has come up for hearing today after the suit has been pending for more than 11 years. Mr. Gopal Narain has placed reliance on a number of rulings and he has laid lot of stress on the ruling in the case of Paras Nath Hira Lal Vs. Kishan Lal Chuni Lal and Others, . It may be pointed that the Explanation which has been incorporated by the Punjab Amendment is not applicable to Allahabad and that ruling was in the light of Rule 17 as it stood originally in the statute. The said Explanation is very significant as it is no longer necessary for the plaintiff to produce at the time of the institution of the suit the original account books along with the Statements of Accounts and get the relevant entry marked in the Original book. The other rulings cited are Air 192 Lah 136 Ram Singh Vs. Ram Chand.What their Lordships have laid down in that case was a document which is relied upon as basis of the suit must be filed with the suit and must be produced at the first hearing. Such document produced at the evidence stage, whereof the defendant denies knowledge would create grave doubts as to the genuineness of the documents. That was a judgment rendered in the context of the certain documents where even copies had not been filed along with the plaint and the document was sought to be produced for the first time the statement of the plaintiff was being recorded and the defendant was caught completely unaware. The present case is not a case of that nature. Here statements of the account were not only along with the plaint in accordance with

the Explanation to Order Vii, Rule 17, but it was duly examined by the defendants at the time of admission/denial of the documents and it has remained on the file almost for a decade before the case was set down for evidence. The other rulings cited by Mr. opal Narain related to the mode of proving the documents and are not relevant for deciding this application. I find that in the present case, there has been substantial compliance with the requirements of law.

(6) From the above, it is apparent that the present application has been filed with the sole intention of delaying the disposal of the suit and is devoid of any merit. Accordingly, the application is dismissed with costs quantified at Rs.2000.00 .

(7) I.A. is disposed of. Suit No. 170/83

(8) List the suit for trial on 14th to 17th November 1994 and list the case before the D.R. on 25.7.94 for scrutiny.

