
(2005) 01 DEL CK 0111

In the Delhi High Court

Case No : IA No's. 1419 and 1640 of 2004 and CS (OS) 1734 of 1999

Bhushan Steel and Strips Ltd.

APPELLANT

Vs

Bhartiya Loha Udyog P. Ltd.

RESPONDENT

Date of Decision : 13-01-2005

Acts Referred:

Citation : (2005) 81 DRJ 350

Hon'ble Judges : T.S. Thakur, J

Bench : Single Bench

Advocate : Rajesh Banati and Hari Mohan, for the Appellant; Malvika Rajkotia, for the Respondent

Judgement

T.S. Thakur, J.—The statement of the plaintiff was recorded by the Local Commissioner appointed for the purpose. The evidence of the plaintiff was, after cross-examination, closed by the Commissioner against which order the defendant appears to have made a grievance in this Court with a prayer that the defendant should be permitted to further cross-examine the plaintiff. This prayer was declined by Mukul Mudgal, J. in terms of his Order dated 1st November, 2004. Learned counsel for the defendant points out that she has preferred an appeal against the said Order which is coming up for admission before the Division Bench on 19th January, 2005. She further submits that the pendency of the appeal notwithstanding, the defendant is ready to go on with his evidence.

2. By order dated 29th November, 2004, learned counsel for the parties were directed to furnish a chart indicating whether any portion of the affidavit to be treated as examination-in-chief of the witnesses was beyond the pleadings. While the plaintiff has filed a chart, the defendant has not. Learned counsel for the parties, however, agree that instead of this court embarking upon an exercise to find out whether and if so what portion of the affidavit filed by the defendant is beyond the pleading, the defendant could be directed to be examined in chief orally before the Joint Registrar in which case, the Joint Registrar should be able to decide as to whether the question or the answer given to the same is in any

way impermissible in law. There is merit in that submission. It is unnecessary in my view to meticulously examine whether and if so what portion of the affidavit is contrary to or beyond the pleadings of the parties. The proper course in the peculiar facts and circumstances of the case is to examine Sh. Gopal Chand Mittal, Director of the defendant Company as the defendant in the case before the Joint Registrar. The Joint Registrar shall be free to determine as and when the question arises as to whether any part of the question or the answer thereto is, for any reason, legally impermissible, subject to the ultimate decision of this Court.

3. It was also pointed out by counsel appearing for the plaintiff that along with the affidavit of Sh. Gopal Chand Mittal, the defendant has tried to introduce as many as 404 documents which were never filed before the framing of the issues and regarding which this Court has not granted any permission whatsoever. Counsel for the defendant fairly concedes that documents which were not on record before the framing of the issues could not be produced, proved or relied upon without the permission of the court. She further points out that in terms of order dated 19th November, 2001, the parties had been given the permission to produce documents after the framing of the issues. A reading of the order dated 19th November, 2001 does show that the parties had been given four weeks time to produce documents after the issues had been framed. At the same time, by order dated 14th March, 2002, it was clearly recorded that no additional document filed or offered by the parties for admission/denial in compliance of order dated 19th November, 2002.

4. In the circumstances, introduction of any document at this stage by the defendant would be legally impermissible unless the court grants permission to do so upon an application made in that or half. No application has admittedly been filed by the defendant till date seeking permission to produce anyone of the 404 documents referred to above. There is, Therefore, no gainsaying that the documents enclosed with the affidavit shall not be taken to account by the Joint Registrar or allowed to be proved or referred to in the course of the statement. The defendant shall be free to refer to or prove in accordance with law any document which it has produced on or before the date the admission/denial on the documents was recorded.

5. Learned counsel for the defendant at this stage drew my attention to is No. 1640/2004 by which the defendant has sought permission to allow it to produce a certified copy of the affidavit allegedly file by Sh. A. K. Chaubey in CrI. M. No. 4875/2003 in the High Court of Allahabad. In the objections filed on behalf of the plaintiff, the genuineness of this document has not been disputed nor is it stated that Sh. Chaubey had not, at any stage, filed any affidavit in any proceedings including in CrI. M. Application No. 4875/2003 at Allahabad. That apart, the document in question is a certified copy of the alleged affidavit filed by Sh. Chaubey and is coming from proper custody. According to learned counsel for the plaintiff, the affidavit in question has been dealt with by the Allahabad High Court

while disposing of the proceedings in terms of its order dated 6th April, 2004 certified copy whereof has also been filed by him. We are not, for the present, examining whether the contents of the affidavit are in any way relevant to the case of one or the other party. As to what assistance the defendant can draw from the affidavit and whether the same can be looked into without say further proof are matters that will remain open to be examined at the appropriate stage. All that need be examined for the present is whether the document sought to be produced is genuine so that it could be let in at this stage. My answer to that in the affirmative. I accordingly allow is No. 1640/2004 and permit the defendant to place on record the certified copy of the affidavit alleged to have been filed by Sh. A. K. Chaubey in Crl. M. No. 4875/2003 before the High Court of Adjudicator at Allahabad.

6. The defendant shall now keep Shri Gopal Chand Mittal present for examination and cross-examination before the Joint Registrar on 10th February, 2005 at 2:30 PM.

7. is No. 1419/2004 is, in the light of the directions issued hereinabove, disposed of.