

(1924) 02 AHC CK 0015
In the Allahabad High Court

Firm Kedar Nath Durga Prasad

APPELLANT

Vs

Firm Bishwanath Lakshmi Chand

RESPONDENT

Date of Decision : 11-02-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 18

Citation : 80 Ind. Cas. 787

Hon'ble Judges : Walsh, J; Ryves, J

Bench : Division Bench

Judgement

1. We think that this order has arisen out of a misunderstanding. In some ways the defendants are to blame. If they wanted to pin the plaintiffs down to a statement on oath of the relevant documents in the plaintiffs' possession relating either to this case, or the contract of August, 1918, or the damages claimed in the suit, they ought to have applied to the Court without making any affidavit at all for an order directing the plaintiffs to state on oath the documents in their possession under Order XI, Rule 19. This they have not done. They omitted this step. They fished to go beyond Order XI, Rule 15, and applied to inspect under Order XI, Rule 18 documents not mentioned in the pleadings or in the affidavit of documents. They had to found such an application upon an affidavit showing of what documents inspection was sought. We are of opinion that the affidavit which was filed with that object was totally insufficient. Carefully examined, it did not comply with the rule. More important still, we are of opinion that under Order XI, Rule 18, when a party applies to inspect documents which are not in the pleadings or in a previous affidavit of documents, and makes an affidavit for that purpose, the Court ought not to make an order for inspection without giving the other side an opportunity of replying on affidavit. If the other side in this case had replied on affidavit, in all probability this trouble would never have arisen. But an atmosphere of suspicion and distrust has grown up. The plaintiffs put in an application, which was not on affidavit, in which they stated that certain books are not in their shop. It is contended that is the ordinary expression for "are not used in "their busine

Sections" Mr. Dillon naturally says it is consistent with their being in their house. The learned Judge complains that the plaintiffs did not support their application by an affidavit, and after throwing a cloud of suspicion over the plaintiffs' conduct, he has actually dismissed their suit, apparently because it was the only remedy which he could find in the Code. We think that there is a better remedy than that. The plaintiffs are desirous of making an affidavit, which they ought to have been called upon to do long ago stating exactly the books--identifying them by a precise description which will be understood by everybody--which are now or have been in their possession since August 1918, and which contain anything relating to the case in question or the contract in dispute. In addition they are desirous of stating on oath that the four books which they previously said were not kept in the shop and which the defendants now say they want to see, never have been kept in their business and do not exist. We think they ought to be allowed to make this affidavit which must cover both the past and the present of their own position or that of anybody under them. If they do this according to the well established practice--at any rate in England from which these rules are derived--that affidavit is conclusive and the Court cannot go behind it unless there is something, as Mr. Dillon suggests, like an answer in cross-examination or some other documentary evidence showing conclusively that there is such entry or book. We give the plaintiffs an opportunity of filing such an affidavit before us at 11 a.M. tomorrow, and Mr. Dillon accepts that on behalf of his clients. It will be placed upon the record which will be returned to the lower Court, and the order of the Court below will be modified by substituting this order, and the costs of these proceedings here and in the Court below will be costs in the suit, which must be presented without delay.