

(1985) 03 DEL CK 0029

In the Delhi High Court

Case No : Civil Revision Appeal No. 851 of 1984

Gay Electronics

APPELLANT

Vs

Karnal CCC Stores

RESPONDENT

Date of Decision : 25-03-1985

Acts Referred:

Citation : (1985) RLR 371

Hon'ble Judges : J.D. Jain, J

Bench : Single Bench

Advocate : B.R. Malik, for the Appellant;

Judgement

J.D. Jam, J.

(1) The facts germane to the decision of this revision succinctly are that petitioner instituted a suit for recovery of Rs.11,360.00 on account of the balance prices of "sound system for open air theatre" supplied to the defendant. Certain issues were framed on 27.1.82 but subsequently petitioner sought amendment of plaint. As a sequel thereto, two additional issues were framed by the Subordinate Judges on 13.9.84 which were treated as preliminary in nature. The suit was adjourned to 18.10.84 for evidence of the parties. However, a few days prior to same application dated 12.10.84 was made by the petitioner purporting to be under order Xii Rule 2 read with Section 151, CPC (for short the "the Code") praying that the defendant be directed to admit a couple of letters alleged to have been written by the defendant. The said application came up for hearing on 18.10.84 which, as stated above, was the date for recording of evidence. The Sub Judge dismissed the said application with the following laconic order: "This application at this stage is not maintainable and the same is dismissed."

(2) The grievance of the learned counsel for petitioner precisely is that even if the learned Sub-Judge was not inclined to entertain his application under order Xii Rule 2 of the Code he could not have denied him the opportunity to adduce evidence by straightaway adjourning the suit for arguments on preliminary

issues.

(3) There is no appearance on behalf of the respondent today although counsel for the respondent was present on the last date of hearing.

(4) I have perused the application under order Xii Rule 2 dated 12.10.84. The application was to the Court for a direction to the defendant to admit or deny the two letters mentioned therein. However, a bare reading of Order Xii Rule 2 would show that such an application is not maintainable there under. It contemplates calling upon by either party to the suit the other party to admit within 15 days from the date of service of the notice any document. Such notice has to be given in Form 9, Appendix "c" of the Code, of course with such variations as circumstances may require (See Rule 3 order XII). Admittedly the said application is not in the prescribed form and as explained by the learned counsel for the petitioner it could not be because it was addressed to the Court and not to the defendant. However, his submission is that the Court could still call upon the defendant to admit or deny those documents. It may be pertinent in this context to notice O. 12 R. 3.

"NOTWITHSTANDING that no notice to admit documents has been given under rule 2, the Court may, at any stage of the proceeding before it, of its own motion, call upon any party to admit any document and shall, in such a case, record whether the party admits or refuses or neglects to admit such document"

(5) It is true that on its plain language the power has been conferred on the Court to act suo motu at any stage of the proceeding before it. However, there is no bar to the exercise of this power by the Court even at the request of any of the parties. Looked at this angle, the Court was certainly competent to call upon the defendant to admit or deny the two documents even though the application dated 12.10.84 was not in conformity with the aforesaid provision. It has been 1985. Rajdhani Law Reporter repeatedly held that there is not much in the label of the application provided the Court has power to do a certain thing and the Court should exercise such power to advance the cause of justice. Admission/denial of documents adverted to in the said application might have obviated the necessity of lengthy evidences. Anyhow, even if the impugned order cannot be said to be illegal it is incumbent upon the plaintiff to produce evidence. The record does not show that the evidence of the plaintiff was not present on the said date ; rather it would appear that no effort was made by the Court to find out whether the evidence of the petitioner was available or not. Under the circumstances, the impugned order straight away directing the parties to address arguments on the preliminary issues, thus shutting out their evidence is bad in law.

(6) To sum up, the impugned order cannot be sustained. It is accordingly set aside and the Court below is directed to afford an opportunity to the plaintiff-petitioner and for that matter even the defendant to adduce evidence on the preliminary issues if they so choose. The Court may, of course, in its wisdom call

upon the defendant to admit/ deny the documents referred to in application dated 12.10.84 of the plaintiff.