
(2017) 03 AHC CK 0012

In the Allahabad High Court

Case No : 82 of 2017 & S.C.C. Revision No. 82 of 2017

Harmeet Singh (Patakewala)

APPELLANT

Vs

Smt. Meena Rohtigi

RESPONDENT

Date of Decision : 28-03-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 2, Order 47 Rule 14 (3)

Citation : (2017) 2 ARC 135

Hon'ble Judges : Manoj Misra, J.

Bench : Single Bench

Advocate : Siddhartha Srivastava, Advocate, for the Revisionist

Final Decision : Dismissed

Judgement

Manoj Misra, J.— Heard learned counsel for the revisionist.

2. The instant revision has been filed by defendant against an order dated 22.2.2017 passed by Additional District Judge, Room No. 12, Bareilly in SCC Suit No. 33 of 2011 by which the application 71Ga filed by the plaintiff to bring on record certain documents i.e. the notice and counterfoil of the receipts, have been allowed on costs of Rs. 2000/-.

3. A perusal of the record would reveal that the plaintiff had filed application 71Ga along with an affidavit disclosing that the said notice had got misplaced and therefore she could not produce the same at the time of filing of the plaint and upon search of the record she could find out the documents and therefore the same were being produced.

4. The court below after being satisfied with the explanation offered in the affidavit and after discussing various judgements on the issue, allowed the application 71Ga.

5. The contention of learned counsel for the revisionist is that Order 7, Rule 14 CPC provides that the plaintiff at the time of presentation of the plaint must

produce in court all those documents on which he relies upon and since the documents were not produced at the time of presentation of the plaint, the same could not have been accepted except upon showing good cause. It has been submitted that in the plaint, the date of the notice has not been mentioned, though it has been mentioned that a notice was sent and was served on the defendant therefore a valuable right had accrued to the defendant which could not have been taken away by allowing the application 71 Ga.

6. The order impugned has also been assailed on the ground that the provisions of Order 7, Rule 14 and Order 13, Rule 1 CPC have to be conjointly read to find out the legislative intent. It has been submitted that the intention of the legislature by incorporating Order 7, Rule 14 CPC and Order 13, Rule 1 CPC was to ensure that at the time of filing of the plaint, the entire documentary evidence in original is brought on record. Thereafter, only in exceptional circumstances the documentary evidence should be accepted by the court, particularly when it is to be used for cross-examination or to refresh memory of the witness.

7. The aforesaid contention of learned counsel for the revisionist cannot be accepted as a matter of principle in view of Sub-Rule (3) of Rule 14 Order 7 CPC which empowers the court to grant leave to produce or enter in the list of documents, a document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list. More so, because Rule 2 Order 13 CPC, which provided the consequences for non - production of the documents at the earlier stages, has been omitted by Act No. 46 of 1999 w.e.f. 1.7.2002. The earlier provision of Rule 2 Order 13 of the Code provided that no documentary evidence in the possession or power of any party, which has not been produced in accordance with law as per the procedure prescribed, shall be received at any subsequent stage of the proceeding unless good cause is shown to the satisfaction of the court for non production thereof. By deletion of the aforesaid provision, the legislature left it to the discretion of the court to permit filing of the documents in exercise of its inherent power under Section 151 C.P.C. or by way of granting leave in exercise of power conferred by Sub Rule (3) of Rule 14 Order 7 C.P.C. It is well settled that procedure is the hand - maid of justice. Therefore, ordinarily, the courts must exercise their discretion to subserve the ends of justice and in furtherance thereof. Justice would falter if parties are not allowed to bring in their evidence on record for enabling the Court to effectively and completely decide the real controversy between the parties. Hence, where the Code does not put any restriction on the Court to accept documents at a later stage of the trial proceeding, the Court must be liberal in accepting such documents in exercise of their discretionary power, unless there are special circumstances to deny such acceptance, which, obviously, would depend on the facts of each case.

8. Coming to the facts of the present case, the court below in the penultimate paragraph of the impugned order has recorded its satisfaction that sufficient cause was shown by the plaintiff for not being able to produce the documents

earlier and the affidavit filed by the plaintiff, offering the explanation, was not rebutted. Under the circumstances, this Court finds no good reason to interfere with the discretion exercised by the trial court.

9. In so far as the contention that by admitting the document, valuable right accrued to the petitioner has been violated, suffice to say that when suit had already been instituted and the plaintiff had claimed in the plaint that notice terminating tenancy had been sent to the defendant, by filing copy of the notice, the plaintiff would only be able to prove the fact already alleged therefore there is no occasion to hold that by allowing such document to be brought on record any valuable right of the defendant has been violated.

10. The revision is dismissed.