
(1986) 09 OHC CK 0049
In the Orissa High Court
Case No : C.R. No. 430 of 1986

Hemanta Kumar Basu

APPELLANT

Vs

Sudarsan Sahoo

RESPONDENT

Date of Decision : 02-09-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 1, Order 13 Rule 1, Order 13 Rule 2

Citation : (1986) 62 CLT 441

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : S.C. Ray and N. Ray, for the Appellant; R.K. Mohapatra, K.B. Kar, S.S. Das and B. Routray, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Mohapatra, J.—Defendant in a pending suit is the Petitioner in this civil revision. The order permitting the Plaintiff to file some documents in the midst of the trial and to recall the Plaintiff as witness to prove the documents is assailed in this case.

2. The suit is one for damages. Plaintiff claims that on account of a letter issued by the Defendant his reputation has been greatly affected. He claims that as a reputed craftsman, he had extensive travel to many parts of the World and had also received National Award on account of his superior craftsmanship. In spite of it the Defendant has damaged his reputation by addressing a letter. In the written statement, Defendant denied the allegations including the issue of the letter.

3. While the Plaintiff was examined as P.W. 2 in cross-examination he stated:

I can show documents to the effect that I had been to London, U.S.A. Japan and other Countries.

I can show documents to the effect that I was exporting Budha's Statute to

different Countries. At present. I cannot show any documents.

At another stage, to a question in cross-examination, he answered.

I have not produced my certificates of getting awards.

4. After recording the evidence of P.W. 2 on 23-6-1986, the evidence on the side of the Plaintiff was closed and the case was posted to the next day for further hearing, when Plaintiff filed two petitions one praying to accept some of the documents which P.W. 2 stated to produce and to recall P.W. 2 for proving those documents and the other for accepting some public documents. In the petition for recalling P.W. 2, it was stated that for proving the documents filed, the witness is to be recalled. On the said petition, the suit was adjourned to 25-6-1986 to give opportunity to the Defendant to file objection. In his objection, the Defendant asserted that no sufficient good cause is shown for withholding or filing of the said documents in time and it is nothing but to fill up the lacuna adduced on behalf of the Plaintiff. On consideration of the petition and the objection, the trial court found that in view of the cross-examination of P.W. 2, it is desirable to allow the petition though the same has been filed at a belated stage. He allowed the petition subjected to payment of costs. On 26-6-1986, the learned Counsel for the Defendant received the costs subject to the condition that the Defendant would go in revision against the order. Thus, the revision is before this Court.

5. There is no doubt that the Plaintiff has not complied with the provisions of Order 13, Rules 1 and 2, Code of Civil Procedure. The documents relied upon which were in possession of the Plaintiff should have been filed along with the plaint. At the latest those documents should have been filed before settlement of the issues as required under Rule 1 of Order 13, Code of Civil Procedure. It has become a disturbing feature in trial of suits that the provisions of the CPC are followed more-in its breach. Parties not being well conversant with the procedure, engage counsel to assist them who have professional acumen. Yet the provisions of Order 10, Rule 1, CPC or Order 13, Rule 1, CPC are not even looked into. The mandate of the Legislature in Rule 2 of Order 13, CPC for the consequences is not taken care of. This is a case which reflects such a state of affair.

6. Procedure, however, is handmaid of justice and is not to obstruct the free flow of it. It is not disputed that the trial court has jurisdiction to receive documents at later stage and permit proof of the same. Mr. S.C. Ray, the learned Counsel for the petition however, submitted that the trial court in this case exercised the jurisdiction with material irregularity, since the reasons given are only surmises not following from the statements in the petitions. Mr. R.K. Mohapatra, the learned Counsel for the opposite party relied upon a decision of this Court reported in *Biswanath Satpathy and Ors. v. Subarna Dibya and Anr.* ILR 1974 Cutt. 905, and a decision of the Supreme Court reported in *Madan Gopal Kanodia Vs. Mamraj Maniram and Others*, , and submitted that the reasons given by the

trial court for accepting the documents and recalling the witness to prove the same are in the interest of justice.

7. In the decision reported in Biswanath Satpathy's case ILR 1974 Cutt. 905 (supra) it was observed:

If a document appears to be relevant and not such as should be prohibited from coming on the record, the Court may take a lenient view and admit the document even though filed at a late stage on payment of costs unless the party filing the document is grossly negligent of the document appears to be of suspicious nature.

8. Considering the decision of the Supreme Court and two other decisions one reported in Sir Hari Ram Goenka and Others Vs. Lachmi Singh and Others, and Kumar Gopika Ram Ray v. Atal Singh and Ors. AIR 1929 P.C. 99, R.C. Patnaik, J., in a recent decision reported in Bhikari Charan Patra Vs. Basanti Bewa and Others, held:.

Whereas the object of Order 13, Rule 1 is to lay down the stage when a party shall file documentary evidence so that each knows on what document" the others seeks to rely and gets ready for the trial, Order 13, Rule 2 makes provision for meeting certain contingencies.

The object of the rules is not to penalise the party but to secure a fair trial of the case. Where Order 13, Rule 2 is invoked mala fide, where the move is to cause delay or is vexatious, the cause shown cannot be held to be good cause shown to the satisfaction of the Court. The doors of the discretionary jurisdiction should be closed. Where, however, the document is vital and would assist the Court in coming to a decision, the document should not be shut out.

9. The trial court has observed that in view of the cross-examination, the documents should be permitted to be filed and proved by recalling P.W. 2. The documents have not been filed for prolonging the trial nor they have been filed with any ulterior motive. The Defendant in this case has not yet adduced the evidence. He can get adequate opportunity to disprove the documents. He can also further cross-examine P.W. 2. If necessity arises, he may also pray for recalling P.W. 1. Therefore, the trial court rightly accepted the documents and permitted recalling of P.W. 2. I am not able to find any material irregularity in exercise of the jurisdiction.

10. In the result, the civil revision is dismissed. There shall be no order as to costs.