

(1972) 01 CAL CK 0024
In the Calcutta High Court
Case No : Suit No. 371 of 1971

India Foils Ltd.

APPELLANT

Vs

The 5th Industrial Tribunal, West Bengal and Others

RESPONDENT

Date of Decision : 19-01-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 14

Citation : AIR 1972 Cal 308 : 76 CWN 404

Hon'ble Judges : B.C. Mitra, J

Bench : Single Bench

Advocate : A.K. Dutt, for the Appellant; Saraf, for the Respondent

Judgement

1. This is an application for appropriate order and/or directions directing the respondents not to give effect to or enforce an order of the respondent No. 1, being order No. 27 of July 3, 1971.

2. The petitioner's employees are members of a Trade Union known as India Foils Employees' Union. According to the petitioner most of the supervisors and staff assistants, who are members of the Association, are not "workmen" within the meaning of the Industrial Disputes Act and for that reason, are not competent to raise any industrial dispute. According to the petitioner again although the supervisors and staff assistants are not entitled to raise an industrial dispute, they purported to raise such a dispute before the Labour Directorate, Government of West Bengal through the third respondent. An order of reference was made on June 4, 1969, by which the dispute raised by the said workmen was referred to the first respondent. The issues framed in the order of reference are:

1. Incentive/Production bonus.

2. Gratuity.

Written statements were filed before the first respondent according to the

directions given. On March 21, 1971, the third respondent filed a petition before the first respondent in which it was stated that the Association would at the time of hearing of the case rely on documents which were filed as annexures to the written statements. On May 2, 1970, the third respondent filed another petition setting out a list of other documents to be relied upon at the time of hearing the case. On July 3, 1971, the third respondent filed a petition stating that the documents mentioned in their petition of May 2, 1970, were in the possession of the petitioner and that on May 28, 1971, the Association served a notice on the petitioner asking it to produce the documents, particulars whereof were given in the notice. It was alleged in this petition that the documents would be required to prove the case of the employees in connection with the preliminary objection raised by the petitioner.

3. On July 3, 1971, the first respondent made the impugned order which is as follows:

"Both parties are present. Heard the learned lawyers of both sides. The Association files a petition in duplicate. Make over a copy of the petition with a copy of Annexure "M" to the company. The company to produce the documents mentioned by the Union on its petition dated 2-5-70 and in Annexure M of 27-5-71 if in power and possession.

Documents be filed by the company within a fortnight from the date of this order."

Being aggrieved by this order, the petitioner made an application under Article 226 of the Constitution and obtained the rule nisi which is the subject-matter of this application. The first point urged by Mr. A. K. Dutt, appearing for the petitioner was that the first respondent had no jurisdiction to make the order for production of documents. He argued that this order was made contrary to and in violation of the provisions in the CPC and the rules framed under the Industrial Disputes Act. He referred to Section 11(3) of the Act which provides that the first respondent shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure. He also referred to Rule 24 of the Rules framed under the Act which says that in addition to the powers conferred by the Act, Boards, Labour Courts and Tribunals shall have the same powers as are vested in a Civil Court under the CPC when trying a suit in respect of five different matters set out under Rule 24. Mr. Dutt argued firstly that the third respondent had no right to call upon his clients to produce the documents before the Tribunal as it purported to. Secondly, he argued that the impugned order could not be made by the first respondent as there was nothing on record to show that the documents required to be produced by the petitioner were in the petitioner's possession and power. The documents, production of which has been ordered by the first respondent, are set out in a letter dated May 27, 1971, addressed by the third respondent to the petitioner. Mr. Dutt submitted that if the third respondent felt that those documents were in the possession and power of the petitioner, he should have made an application before the Tribunal for discovery of documents

under Order 11, Rule 12 of the Civil Procedure Code. In support of this contention reliance was placed by Mr. Dutt on a decision of this Court in *Burn and Co. Vs. Jitendra Nath Maitra and Others*, , in which it was held that until an affidavit of documents has been directed to be filed, the court would have no jurisdiction to order inspection and that this was not a procedure which could be omitted. In that case, however, the question was one of inspection and not of production only. But it seems to me that the observations of Sinha, J. in that decision are very relevant for determining the questions in this application.

4. Counsel for the third respondent, however, submitted that the Tribunal had ample jurisdiction under Order 11, Rule 14 of the CPC to make the order which it did. He argued that under that Rule the Court could at any time during the pendency of a suit, order production by any party of documents. He submitted that there was no restriction on the powers of the Court to make an order for production of documents. He argued that in this case the Tribunal had made the order under the provisions of Rule 14 of Order 11 of the Code, though the Tribunal had not stated that the order was made under that Rule. In support of this contention Mr. Saraf, counsel for the third respondent, relied upon several cases to which I shall now refer. The first decision relied upon by him is one of this Court, in (1946) 50 Cal WN 845. In that case it was held that an order for production of documents under Order 11, Rule 14 of the CPC was not dependent on a prior order for discovery under Rule 12 and that the two rules relate to different matters. In that case, however, the respondent had admitted that the books which were directed to be produced were in its possession or power. This decision to my mind, is not of any assistance to the third respondent in this case inasmuch as there was a clear admission by the respondent that the books were in his possession or power. The next case relied upon was a decision of the Allahabad High Court in *Sri Niwas Vs. Election Tribunal at Lucknow and Others*, . In that case also it was held that on a plain reading of Order 11, Rule 14 it would be clear that this rule was not subject in all cases to Rule 12. Reliance was also placed on a decision of the Andhra Pradesh High Court in AIR 1958 Andh Pra 157 and a decision of the Punjab High Court in *Delite Cinema and Others Vs. Rameshwar Dyal and Another*, . It seems to me that although the Court undoubtedly has a power to make an order for production of documents at any time during the pendency of any suit, such an order can be made only if two pre-conditions as contemplated by Rule 14 are satisfied, namely, that the documents must be in the possession or power of the party against whom the order is made; and secondly, the documents must relate to the matter in question in the suit. It is amply clear from the text of the rule itself that wide power to direct production of documents at any stage of the suit has been given to the Court subject to the two conditions mentioned above.

5. The Court has therefore, to be satisfied either upon admission of the party against whom the order is made or from an affidavit filed on his behalf or from other material such as correspondence that the documents which are directed to be produced are in the possession and power of the party against whom the

order was to be made. To my mind, it seems that unless there is evidence before the Court that the documents are in the possession or power of the party against whom the order is sought, the Court will have no jurisdiction to make an order for production of the same. The second condition is also very relevant and important, namely that the documents must relate to the matter in question in the proceeding pending before the Court. It is not open to a party to come to Court and ask for an order for production of numerous documents without satisfying the Court that the documents are relevant, and that on the records there is ample evidence that the documents are in the possession or power of the party against whom the order was to be made. In this case, it is amply clear from the text of the order itself made on July 3, 1971 that the Tribunal was far from clear in its mind as to whether the documents were in the power and possession of the petitioner, because the petitioner was directed to produce the documents if in its power and possession. That makes it amply clear that the Tribunal had no materials before it to satisfy itself that the documents were in its possession or power, and in my view in the absence of such material, or in the absence of admission by a party that the documents were in its possession or power, no such order could be made by the Tribunal. I should also mention that the Tribunal has not stated that the documents are relevant to the matters in question pending before that Tribunal. In order to exercise the wide powers given by Rule 14 of Order 11 of the Civil Procedure Code, the Court has to come to a conclusion that the documents relate to matters in question pending before that Court. If it is not so satisfied the Court will have no jurisdiction to make an order for production of such documents in exercise of the powers under Order 11, Rule 14 of the Code. In this case there is neither evidence nor admission relating to the possession of the documents by the petitioner nor is there any finding by the Tribunal that the documents are relevant for the purpose of the pending proceedings. In the absence of satisfaction of the conditions mentioned earlier in this judgment the Tribunal in my opinion, had no jurisdiction to make the impugned order.

6. For the reasons mentioned above, the Rule is made absolute. There will be no order as to costs. Let the records be sent down to the Tribunal expeditiously.