
(1988) 03 OHC CK 0010

In the Orissa High Court

Case No : Misc. Case No's. 69 and 70 of 1987

Janakiballav Patnaik

APPELLANT

Vs

Bennett Coleman and Co. Ltd. and Others

RESPONDENT

Date of Decision : 09-03-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 12, Order 11 Rule 14

Citation : (1988) 03 OHC CK 0010

Hon'ble Judges : K.P. Mohapatra, J

Bench : Single Bench

Advocate : B.M. Patnaik, for the Appellant; R. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

K.P. Mohapatra, J.—The first petition is for discovery of documents under Order 11, Rule 12 and the second petition is for production; of the same documents under Order 11, Rule 14 of the Civil P. C. ("Code" for short). Therefore, both the petitions are disposed of by this common order.

2. It is stated by the plaintiff that in order to prove his case for damages against the defendants for the libellous publications in the Illustrated Weekly of India, it is necessary that some documents which are relevant and are within the possession and power of defendants 1 to 3 should not only be given discovery, but should also be produced in Court in accordance with law.

3. Defendants 1 to 3 have opposed the petitions and in their counters, they have stated that the documents are their evidence which they will dduce at the time of hearing. They do not tend to support the plaintiffs case. Therefore, the disclosure of the documents will amount to disclosure of their evidence, in which case the plaintiff will be in a position to approach the defence witnesses in order to gain over them. They cannot also be forced to disclose their sources of information for publication of the offending articles. No prejudice will, therefore, be caused to the plaintiff, if the documents are neither given discovery nor produced in Court.

4. For the purpose of convenience, Rules 12 and 14 of Order 11 are reproduced below :

"Rule 12. Application for discovery of documents:-- Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order either generally or limited to certain classes of documents, as may, in its discretion, be thought fit : Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Rule 14. Production of documents :-- It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just."

In Shri M.L. Sethi Vs. Shri R.P. Kapur, , Order 11, Rule 12 came up for interpretation. It was held that generally speaking, a party is entitled to inspection of all documents which do not themselves constitute exclusively the other party's evidence of his case or title. If a party wants inspection of documents in the possession of the opposite party, he cannot inspect them unless the other party produces them. The party wanting inspection must, therefore, call upon the opposite party to produce the documents. And how can a party do this unless he knows what documents are in the possession or power of the opposite party? In other words, unless the party seeking discovery knows what are the documents in the possession or custody of the opposite party which would throw light upon the question in controversy, how is it possible for him to ask for discovery of specific documents? It was further held that every document which will throw any light on the case is a document relating to a matter in dispute in the proceedings, though it might not be admissible in evidence. In other words, a document might be inadmissible in evidence, yet it may contain information which may either directly or indirectly enable the party seeking discovery either to advance his case or damage the adversary's case or which may lead to a trial or enquiry which may have either of these two consequences. The principle laid down was followed in Rajkishore Prasad and Others Vs. The State of Orissa and Others, and J.S. Construction Pvt. Ltd. Vs. Damodar Rout, .

5. Now coming to the documents, at the time of hearing Mr. S. M. Patnaik, learned; counsel for the plaintiff did not press for discovery/production of the documents mentioned in items "A" and "E" of the petitions. Therefore, no order is necessary in respect of these documents.

6. Item "B" relates to documents, letters and resolutions passed by the Board of

Directors of defendant No. 1 regarding conditions of appointment including remuneration of defendants 2 and 3. These documents prima facie seem to be relevant for the purpose of the suit in order to determine if at all the aforesaid defendants are liable for damages or the extent of vicarious liability of defendant 1, if any. These documents are obviously within the possession and power of the defendants. The documents in item "C" are included in the documents in item "B". If, however, the documents referred to therein were separately drawn up then they are also equally relevant for the same purpose as the documents in item "B". The documents in item "D" are in two parts. First, the articles published in the Illustrated Weekly of India dt 18-24 May, 1986 and second the articles published in the same journal dated 3-9 August, 1986. The draft finalised copies are relevant because the published articles are undoubtedly relevant for the purpose of the suit. It is stated that the draft finalised copies of the articles published in the journal dt. 18-24 May, 1986 have been seized by the police in connection with another case. If that be so, the plaintiff shall be free to call for the said documents from the appropriate authority. But, if both these documents are still within the possession and power of the defendants, it may be necessary to look into them at the time of hearing. Therefore, all these documents mentioned in items "B", "C" and "D" are relevant for the purpose of adjudicating the controversy between the parties. The above apart, since the defendants themselves say that these documents are their evidence, they ought to have been produced in Court under Order 13, Rule 1 of the Code on or before the settlement of issues and if that would have been done, there would have been no necessity for the plaintiff to file these petitions. So, for the purpose of a fair trial the defendants must disclose these documents, in Court.

7. For the aforesaid reasons, the petitions are allowed and defendants 1 to 3 are directed to give discovery of and produce upon oath the documents described in items " B", "C and "D" of the petitions in a sealed cover within fifteen days. The documents shall be kept in safe custody with the Deputy Registrar (Judicial).