
(1986) 04 RAJ CK 0068

In the Rajasthan High Court

Case No : Civil Revision Petition No. 53 of 1985

Kalyan Singh

APPELLANT

Vs

James S. Ram

RESPONDENT

Date of Decision : 15-04-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1987) 2 WLN 171

Hon'ble Judges : Mohini Kapoor, J

Bench : Single Bench

Judgement

Mohini Kapoor, J.—The learned Addl. District Judge No. 5, Jaipur City, Jaipur, by his order dated 23-11-1985, dismissed an application under O. VI, Rule 5, CPC, presented by the defendant for furnishing better particulars. No. specific reason was given as to why it was considered proper not to direct the plaintiff to furnish the better particulars.

2. The learned Counsel for the petitioner has contended that in this suit for damages instituted by a tenant, the plaint does not disclose the details of the loss suffered by the plaintiff. It has been vaguely mentioned that the petitioner broke open the shop and took away the goods and other valuable things including the cash by removing two "Patties" and shutter of the shop. The loss has been described as goods taken away amounting to Rs. 50,000/-counter shelf, furniture and fixtures etc. damage Rs. 10,000/-, financial loss to the business Rs. 50,000/- and mental and physical suffering Rs. 50,000/-financial loss on account of litigation etc. Rs. 10 000/. After giving this break up, he restricted the claim only to Rs. 15,000/- by mentioning the amount under each head According to the learned Counsel for the petitioner unless the particulars of the loss suffered by the plaintiff respondent are mentioned, he is not in a position to submit a proper written statement. He also contended that without particulars, he may not be able to deny the specific allegations and it, may be possible that it would be held against him that he has admitted the same.

3 The learned Counsel for the non-petitioner, on the other hand has contended that this revision petition is not maintainable because it cannot be said that the lower court has committed an error in exercise of its jurisdiction so as to call for any interference by this Court.

4. I have carefully considered the contentions advanced on both the sides. In the present case the learned Addl. District Judge has not given any reasons for rejecting the application submitted by the defendant petitioner asking for other particulars, the jurisdiction vested in the lower court has not been exercised or it can be said that it has been exercised illegally and with material-irregularity. As such the jurisdiction of this court u/s 115 CPC cannot be said to be barred.

5. Coming to the better particulars, which the petitioner wants to be furnished by the plaintiff respondent in this case, the request appears to be proper. This will be of help not only to the petitioner but also to the plaintiff-respondent as he would be in a position to know as to what he has to prove. When he has alleged loss of goods, loss caused to furniture and removal of cash, etc. then it is expected that he should be in a position to give out the particulars of the goods which were damaged and removed and what was the cash which was removed from the shop etc. It is the duty of the Court to bring out the parties to specific points of dispute so that they may not later on take shifting stands. In the present circumstances, it can be said to be a fit case where the plaintiff ought to have been asked to furnish better particulars about his claim. Accordingly this revision is accepted and the order of the learned ADJ. No. 5, Jaipur City, is set aside and the application of the petitioner for supply of better and full particulars is accepted. The plaintiff respondent shall furnish better particulars before the lower Court within a period of one month.

6. A copy of this order be sent to the learned lower Court.