

(1991) 06 GUJ CK 0032

In the Gujarat High Court

Case No : Civil Revision Application No. 1254 of 1985

Kamalia Brothers and Co.

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 01-06-1991

Acts Referred:

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

Citation : (1991) 06 GUJ CK 0032

Hon'ble Judges : Y.B. Bhatt, J

Bench : Single Bench

Advocate : K.G. Sukhwani, for Maya Bhavani, for the Appellant; K.T. Dave, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

Y.B. Bhatt, J.—The short facts leading to the present revision are as under:

1.1 The present petitioner as plaintiff had filed a suit against the State being Special Civil Suit No. 157 of 1977, for recovery of Rs. 1,77,397.50 for extra work done and for damage on account of termination of the construction contract on the part of the respondent-defendant.

1.2 During the pendency of this suit the petitioner served the respondent with a notice of production in respect of three specific letters. Such letters have been addressed by specific officials of the PWD and also addressed to some specific officers of the PWD. Since the notice of production was not complied with, the petitioner as plaintiff gave an application Exh.73 for discovery on oath of the specified documents such application being under Order 11 Rule 12 of the Civil Procedure Code. This application was heard by the trial court and by order below Exh.73, the same was rejected. It is against the order of rejection that the present revision has been preferred.

2. Learned Counsel for the petitioner contends that the impugned order is bad and deserves to be quashed and set aside inasmuch as the same is based on

assumptions and inferences drawn by the trial court and is not based on any evidence or any plea on the part of the defendant and therefore against the principles of law. It may be borne in mind that the plaintiff's suit is for recovery of the specific amount of money for extra work done and for damages on account of the termination of the contract on the part of the defendant. It appears that the defendant has withheld certain amount for work done by the plaintiff on the ground that the work done was defective, whereas the plaintiff's case is that there was leakage of water from the pipelines on account of the fact that the pipes as well as their joints (which were supplied by the defendant to the plaintiff under the terms of the contract) were not of the requisite quality and were defective and hence the leakage.

3. It is, therefore, obvious that the question of whether the material supplied by the defendant for the work of construction of pipeline was defective and substandard or not is a vital question of fact for the determination of the issues arising in the suit. It was for this reason the plaintiff sought to rely upon the three specific letters exchanged between the officers in the departments of the defendant.

4. In this context, the plain reading of the impugned order at para 2 thereof indicates that the trial court was fully aware and conscious that it is well settled "that the documents which can throw light on the point which is in controversy between the parties can be said to be relevant documents, and discovery to such documents is required to be given by one party to the other party". However, this principle has been clearly ignored by the trial court.

5. The trial court has upheld the contention of the defendant in respect of a simple plea that the letters are confidential letters and confidential letters cannot be produced and discovery in respect thereof cannot be granted. The trial court has not assigned any cogent and or logical reason for upholding this bare plea. It must be borne in mind that the trial court was conscious of the petitioner's plea that merely by labelling the letters in question as "Confidential Letters" the same cannot be excluded from the purview of Order 11 Rule 12 of Civil Procedure Code. The trial court was also aware that the petitioner had specifically contended that no specific or particular privilege in respect of the letters in question had been claimed by the defendant, and that there was no claim and or contention on the part of the defendant that disclosure would be prejudicial to public interest and or to national security and or opposed to public policy and or detrimental to the interest of the defendant in any other manner. In fact there is no reason (for the confidentiality) disclosed by the defendant nor any explanation and or clarification offered in respect of the nature of confidential letters.

6. Under the circumstances it is clear that the bare plea that the letters are "confidential letters" cannot be upheld.

6.1 It is also clear that the trial court has not substantiated its order by resorting to proviso to Order 11 Rule 12 Code of Civil Procedure. The trial court has not

arrived at any finding or expressed any opinion that the discovery of the letters in question is not necessary either for disposing fairly of the suit or for saving costs. In fact the trial court has accepted the contention, in an indirect manner, raised by the petitioner that the letters in question are important documents and relevant for the determination of the controversy between the parties, and go to the root of the important issues raised in the suit. Thus it also appears that the impugned order in rejecting the application for discovery is inconsistent with the trial court's earlier finding that the letters in question are relevant and material documents.

7. The trial Court has also rejected the plaintiff's application on the ground that the documents in question are not between the plaintiff and the defendant, but they are documents between the officials of the defendant. I have no doubt that this observation of the trial court is merely an obfuscation inasmuch as the correspondence between the officers of the defendant can certainly be relied upon by the plaintiff if according to the plaintiff the same may prove or support the plaintiff's case. It is obvious that the Order 11 Rule 12 does not in any way limit the discovery of documents, in the case of letters, to the letters exchanged only by the parties to the suit. The requirements of this provision are limited only to the fact that the documents should be or should have been in the possession or power of a party to the suit, and that the same should relate to any matter in question in the suit. Clearly the letters in question satisfy these requirements and, therefore, the order for discovery thereof cannot be refused on the ground that the letters are not directly between the parties to the suit.

8. In view of the aforesaid findings the revision application must be allowed and accordingly allowed.

9. The impugned order below Exh.73 dated 8th May, 1985 is quashed and set aside. The petitioner-plaintiff's application Exh.73 is granted. The trial court is directed to proceed with the suit and grant the necessary time to the defendant to comply with the order of discovery in respect of the three letters referred to in the said application. Rule made absolute accordingly with costs.