

(2012) 03 RAJ CK 0046
In the Rajasthan High Court
Case No : Civil writ Petition No.5219 of 2007

M/s Amit Tyre House and Another	Vs	APPELLANT
M/s J.K. Industries Ltd. and Another		RESPONDENT

Date of Decision : 21-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227

Citation : (2012) 03 RAJ CK 0046

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Advocate : RM Sharma on behalf of, for the Appellant; Rajesh Sharma, for the Respondent

Final Decision : Dismissed

Judgement

MAHESH BHAGWATI J.

1. By way of the instant writ petition, the petitioners have beseeched to quash and set aside the order dated 1st June, 2007 whereby the learned Additional District Judge, No.3, Jaipur City, Jaipur dismissed two applications filed under order 8 Rule 1 read with Section 151 CPC and another application filed under order 26 Rule 9 & 11 read with Section 151 CPC. The facts of the case in brief are that the respondent-plaintiff filed a suit for recovery of Rs.7,39,493/- against the petitioners-defendants in the Court of District Judge, Jaipur City, Jaipur which came on transfer to the Court of Additional District Judge No.3, Jaipur City, Jaipur, for hearing.

2. During the pendency of the suit, the petitioners-defendants implored the Court to take certain documents on record, as those were necessary for the just decision of the suit. The petitioners also prayed to appoint a Commissioner for the inspection of Accounts as also for the examination of 58 tyres, to be made by some expert. The learned trial court Dismissed the application filed under order 8 Rule 1 CPC with the cost of Rs.300/- and did not find any substance in another

application too as a result of which that also came to be dismissed. The learned trial Court while dismissing both the applications observed that the case was fixed for hearing final arguments and six adjournments had already been granted by the Court to the parties to argue the suit. when the suit was posted for hearing arguments seventh time, the petitioners-defendants filed these two applications, just with a view to procrastinate the trial of the suit and this alone reason made the learned trial Court to dismiss the application with the cost.

3. Learned counsel for the petitioners canvassed that the documents were requested to be taken on record for the just decision of the case. similarly, the accounts were also forged and they were required to be inspected by a Commissioner so that the true report could come on record. Hence, in the interest of justice, the petition may be allowed and the impugned order be set aside.

4. At the very outset, it is relevant to record that the Hon''ble Apex Court in plethora of cases has consistently held that the extraordinary jurisdiction under Article 227 of the Constitution should be invoked sparingly and not in routine. The extraordinary jurisdiction can be invoked by the High Court only when the impugned order is found to be perverse or contrary to material or it results in manifesting injustice. The High Court should escape from interfering with the findings of facts arrived at by the trial court.

5. Adverting to the facts of the case, it is revealed that both the parties had already led the evidence to plead and defend their case. The case was fixed for hearing final arguments and it had been adjourned six times. The petitioners are found to have filed these two applications when the case was posted for final arguments seventh time and undeniably undisputedly, the observation made by the learned trial Court to this extent that the petitioner intended to protract the trial of suit is not without substance. It seems that the petitioners-defendants filed these two applications just with a view to procrastinate the trial of the suit. Had these documents been so relevant and in fact he intended to bring them on record, he could have undergone this exercise much earlier when the case was posted for leading the evidence to defend his case. suppose for a movement, had the arguments been heard by the learned trial Court at the first instance when the case was fixed for final arguments, then could there be any occasion for the petitioners-defendants to file these two applications? The answer is big "No". That simply suggests that the petitioners-defendants just with a view to procrastinate the trial of the suit, preferred to file these two applications, which are found to have been rightly dismissed by the learned trial Court. In view of above, the impugned order is found to be just and proper which suffers from no infirmity. Hence, the petition being devoid of any substance, deserves to be dismissed, which stands dismissed accordingly.