
(2004) 04 RAJ CK 0080
In the Rajasthan High Court
Case No : Civil Writ Petition No. 26 of 2004

New India Assurance Company Ltd.

APPELLANT

Vs

Sumer Chand and Others

RESPONDENT

Date of Decision : 09-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 04 RAJ CK 0080

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Anil Bhandari, for the Appellant; K.R. Saran for Mr. Sajjan Singh, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Garg, J.—The petitioner has filed the present writ petition under Article 226 of the Constitution of India on 2.1.2004 against the respondents with a prayer that by an appropriate writ, order or direction the order dtd. 18.10.2003 (Annex.4) passed by the respondent No. 3 (Additional Dist. Judge No. I, Jodhpur) by which he accepted the application (Annex.1) filed by respondents No. 1 and 2 (plaintiffs) under Order 11 Rule 12 and 14 C.P.C. and ordered that the documents mentioned in para No. 2 of the application (Annex. 1) be produced by the petitioners-defendants be quashed and set aside.

2. The facts of the case as put forward by the petitioner are as under:

(i) That the plaintiffs (respondents No. 1 and 2) filed a suit for claim of Rs. 80,097/- against the present petitioners-defendants for Medi Claim Insurance in the court of respondent No. 3 and the defendants-petitioners filed reply and thereafter issues were framed on 30.5.2002 and the case was fixed for evidence of the claimants-respondents on 8.8.2002.

(ii) Further case of the petitioners is that on 8.8.2002, no witness was produced on behalf of the claimants respondents. However, the respondents No. 1 and 2

submitted an application under Order 11 Rule 12 and 14 C.P.C. stating that respondent No. 3 be asked to produce the following documents:

(a) Misc. Insurance Cover Note No. 110661 dated 22.3.99

(b) Medi Claim Police 4833050000871

(c) Receipt No. 781048 dated 22.3.99

(d) Original application dtd. 15.5.99

(e) Insurance Personal statement dtd. 14.5.99.

(ii) Further case of the petitioners is that they submitted reply (Annex.2) to the application filed by the respondents No. 1 and 2 (plaintiffs) stating that the documents sought through application (Annex. 1) should have been produced by the plaintiff alongwith their plaint and therefore, at this stage, they could not ask the defendants-petitioners to produce them and hence the application be rejected.

(iii) Not only this, the Petitioners-defendants also enclosed application dtd. 15.5.99 (Annex.3) filed by the plaintiffs (respondents No. 1 and 2) and a bare perusal of the application dtd. 15.5.99 (Annex.3) would reveal that the plaintiffs never submitted cover note, receipt and personal statement and hence no case is made and application (Annex. 1) be dismissed.

(iv) The respondent No. 1 (Additional Dist. Judge) after hearing both the parties allowed the application (Annex. 1) vide its order dtd. 18.10.2003 (Annex.4) inter alia holding:

(a) That in support of the application (Annex. 1), affidavit of Sumer Chand (plaintiff No. 1) was filed by the plaintiffs.

(b) That the documents in question were not produced in the Court because they were with the defendants-petitioners.

(c) That no receipt has been produced by the defendants-petitioners to show that they had handed over the above documents to the plaintiffs (respondents No. 1 and 2)

(v) Aggrieved from the order dtd. 18.10.2003 (Annex.4), this writ petition has been filed.

3. Heard and perused the record.

4. So far as relevancy of these documents is concerned, this has not been disputed by both the counsels. The question which arises for consideration is whether in the facts and circumstances of the present case, the impugned order dtd. 18.10.2003 (Annex.4) is sustainable or not.

5. In my considered opinion position of law as is found under Order 11 Rule 12 and 14 C.P.C. is that the documents containing information, directly or indirectly,

enabling a party to advance his own case or to damage his opponent's are document which relate to the matter in question in the suit. In fact, the object of Order 11 Rule 12 is also to elicit admission from the opposite parties that may obviate the necessity to produce lengthy evidence and expedite disposal.

6. Even document which will throw any light on the case is a document relating to a matter in dispute in the proceeding, though it might not be admissible in evidence. As a general rule, party is bound to produce every document in his possession or power which is material or relevant to the suit, unless it is covered by some established privilege.

7. The court has power and jurisdiction to make an order for production of documents at any time (stage) during the pendency of any suit. Such an order can be made only if two pre-conditions are satisfied, namely, that the documents must be in 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.

8. Since in the present case, the documents are relevant for deciding the real controversy between the parties and simply because if they have not been filed alongwith the plaint by the plaintiffs (respondents No. 1 and 2) and if the defendants-petitioners have been directed to produce those documents during trial, in view of this fact, if the learned Additional Dist. Judge (respondent No. 3) has allowed the application (Annex. 1) filed by the respondents No. 1 and 2 (plaintiffs), he has not committed any illegality or irregularity in passing the impugned order dtd. 18.10.2003 (Annex.4). A bare perusal of the order dtd. 18.10.2003 (Annex.4) reveals that the learned trial Judge has given cogent reasons in allowing the application (Annex. 1) and thus impugned order dtd. 18.10.2003 (Annex.4) cannot be said to have been passed illegally or irregularly.

9. The discretion exercised by the learned Judge in allowing the application (Annex. 1) filed by the respondents No. 1 and 2 (plaintiffs) is just and proper and does not require any interference by this Court under Article 226/227 of the Constitution of India.

10. Under Article 227 of the Constitution of India, the High Court cannot interfere with the exercise of a discretionary power vested in the inferior Court or Tribunal, unless its finding or order is clearly perverse or patently unreasonable.

11. It may be stated that High Court's power under Article 226/227 of the Constitution of India should be exercised only when there is dereliction of duty and flagrant violation of law and should be exercised most sparingly in a case where grave injustice would be done unless the Court interferes. It cannot be used as appellate or revisional forum. Apart from this, power under Article 226 is exercised by the Court in its discretion and cannot be claimed as of right by any party.

12. Thus, the impugned order dtd. 18.10.2003 (Annex.4) passed by the learned Additional Dist. Judge (respondent No. 3) cannot be said to have been suffering

from basic infirmity and illegality and the same does not require any interference by this Court under Article 226/227 of the Constitution of India and this writ petition deserves to be dismissed.

For the reasons mentioned above, the present writ petition is dismissed.