

(1997) 08 MP CK 0010
In the Madhya Pradesh High Court
Case No : C.R. No. 909 of 1997

Om Prakash Agarwal

APPELLANT

Vs

Nandlal

RESPONDENT

Date of Decision : 07-08-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 1, Order 13 Rule 2

Citation : (1998) 1 MPLJ 666

Hon'ble Judges : Tejinder Singh Doabia, J

Bench : Single Bench

Advocate : V.K. Bhardwaj, for the Appellant;

Judgement

T.S. Doabia, J.

Shri V. K. Bhardwaj, Counsel for the petitioner.

Heard.

The learned counsel for the petitioner submits that when some documents are placed on the record, along with the plaint, then, there is no necessity to file a separate application under Order 13, Rule 2 of Civil Procedure Code, 1908 (hereinafter referred as to the Code). This appears to be the correct legal position. Before dealing with this aspect of the matter in detail, the provisions of Order 13, Rules 1 and 2 of CPC be noticed. These read as under:

Rule 1 Documentary evidence to be produced (at or before the settlement of issues) - (1) The parties or their pleaders shall produce (at or before the settlement of issues) all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.

(2) The Court shall receive the documents so produced:

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

Rule 2 Effect of non-production of documents. -- (1) No documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of Rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof and the Court receiving any such evidence shall record the reasons for so doing.

(2) Nothing in sub-rule (1) shall apply to documents:

(a) produced for the cross-examination of the witnesses of the other party or;

(b) handed over to a witness merely to refresh his memory;

The provisions noted above, like any other procedural provision are to be construed with a view to advance justice and cut short time span of litigation. So far as Order 13, Rule 1 is concerned its scope is as under:

(1) Rules 1 and 2 of Order 13 and Sub-clause (2) of Rule 2 of Order 13 are meant for different stages and are not contradictory.

(2) This Rule enjoins on the parties to lay their documents before the court at the earliest possible opportunity.

(3) The requirement as to production of document at the earliest is intended to secure speedy and orderly conduct of the suit.

(4) Where the documents are not in possession or power of the party, they cannot and, therefore, need not be produced at or before the settlement of issues.

(5) The rule is peremptory that the documents on which a party intends to rely must be produced at or before the settlement of issue.

(6) As the object of this rule is not to penalise the parties, the court is given discretion, under Rule 2, to receive any documents at later stages of the suit if there is no suspicion about their genuineness.

Order 13, Rule 2 of the Code deals with the eventuality where documents have not been placed on the record in terms of Order 13, Rule 1. Once a document has been placed on record then, a separate application under Order 13, Rule 2 is not required to be given. The above is the clear intention of the statutory provisions noticed above. Even where, an application under order 13, Rule 2 of CPC is made, then, this application is not to be rejected. The scope of Order 13, Rule 2 of CPC may also be noticed.

(1) When the genuineness of a documents is beyond doubt, there can be no reasonable objection to its reception even at a later stage.

(2) Sub-rule (1) must be liberally construed so as to advance the cause of justice. No documents whether public or private which are above suspicion should be excluded if they are necessary for the proper decision of the case.

(3) Sub-rule (1) clothes the Court with discretion to allow production of documents if it is satisfied that good cause is shown to its satisfaction.

(4) Court can receive documents at subsequent stage of the proceedings by granting the application under its inherent powers u/s 151 of the Code.

(5) Where the Court purporting to act under its inherent powers u/s 151 receives a document in evidence at a later stage and the order can be justified under the provisions of this sub-rule (1) it will be deemed to have been passed under it and it would be immaterial that the court purported to do so under its inherent powers u/s 151.

(6) The sub-rule applies only to documents which are in the possession or power of a party. Hence, when the documents are in custody of another court or in the possession of a witness and are produced after the settlement of issues, they cannot be rejected under sub-rule (1).

(7) Vexatious and dilatory applications for the reception of documents cannot be granted.

(8) A good cause means adequate, sound and genuine ground or reason. Where the document of vital importance to the case of the party was stated as not being traceable earlier and there was no apparent reason to withhold the document the party can be allowed to produce it later.

In the present case, the documents were already on the record. As such, the direction given by the Court below that separate application should be filed under Order 13, Rule 2 of CPC is not sustainable. The order is quashed. The Court below would take notice of this and would, proceed further in the matter accordingly.