
(2011) 01 DEL CK 0196

In the Delhi High Court

Case No : IA No. 5187 of 2010 in CS (OS) No. 365 of 2008

Payal International Ltd.

APPELLANT

Vs

Sardanas Art Centre Pvt. Ltd.

RESPONDENT

Date of Decision : 11-01-2011

Acts Referred:

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

Citation : (2011) 01 DEL CK 0196

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Ashok Chhabra, for the Appellant; Shailendra Paul, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.

IA No. 5187/2010 (U/o XIII Rules 1 and 3 Code of Civil Procedure)

1. This order shall dispose of an application filed by the Defendant seeking a direction to remove the letter dated 09.01.2007 filed by the plaintiff along with an affidavit by way of evidence.

2. Briefly stated the facts of the case are that the plaintiff has filed the present suit for recovery of Rs. 23,00,000/- as damages and interest. The allegation in the plaint was that the plaintiff in order to participate in an exhibition at Frankfurt (Germany) had engaged the Defendant for construction of a stall and because of the inferior quality of work and acts of the Defendant; the plaintiff suffered in his business and consequently claimed damages. Issues in the matter were framed on 27.10.2009 and the plaintiff was directed to adduce evidence.

3. Before framing of issues, the plaintiff had filed some documents which included a photocopy of the letter purported to have been written by the Defendant herein. There is an admission attributed to the Defendant that booth

which was to be built by the Defendant was not according to the design. The inconvenience caused to the plaintiff was regretted and it was also undertaken by the Defendant to refund the advance. The exact language of the said letter is as under:

M/s Payal International,

New Delhi.

Dear Sir,

Due to some unavoidable circumstances, the booth has not been made as per design and we authorize you to use other making.

Inconvenience is deeply regretted

Sd/-

(Vivek)

The advance given will be refunded.

4. This letter was put to the Defendant for admission and denial. The letter was denied by the Defendant on 19.08.2009. The plaintiff at the time of filing his affidavit by way of evidence has filed the original letter dated 9.1.2007. The letter has been given the exhibit mark Ex.PW1/65 in the affidavit by way of evidence of the plaintiff, although the letter is slightly torn from one side and has some writings/notes made by the pencil at the bottom. It is this letter that the Defendant has objected to by filing the present application.

5. The contention of the Defendant is that the letter which has been filed by the plaintiff is a forged and fabricated letter. Apart from this, it is urged that this original letter should have been filed in the beginning itself, before framing of the issues in terms of the order XIII Rule 1 CPC and since this was not done, therefore, the letter may be taken off the record.

6. The plaintiff filed a reply to the application and contested the claim of the Defendant. It was contended that the filing of the application is a gross abuse of the processes of law. On merits, it was contended that the letter dated 09.01.2007 which has been filed in original by the plaintiff became necessary on account of the fact that the photocopy of the same was denied by the Defendant. It is stated that this letter was in a locker and in the process of handling, the letter got torn.

7. No doubt, some writings/notes have been made by pencil on the bottom of the letter but it is alleged that these are internal notes of the office of the plaintiff which do not in any manner detract from the contents of the letter. The application of removing the letter in question from the record is totally misconceived and illogical.

8. I have heard the learned Counsel for the parties and perused the record.

9. The order XIII Rule 1 CPC read as under:

ORDER XIII-PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS

1. Original documents 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.

10. A perusal of the aforesaid Order XIII Rule 1 clearly shows that the parties or their pleaders to the suit have to produce the documents in original before framing of issues. But there have been judgments passed by this Court where this provision has been interpreted that admission /denial of documents could be conducted on the basis of photocopies while as the original can be produced at that time. Reliance in this regard can be placed on *Aktiebolaget Volvo and Others Vs. R. Venkatachalam and Another*, .

11. The admission and denial of the document is essential in order to reduce the scope of controversy between the parties before the framing of issues. It is also possible that in a given case, the party on account of sensitive nature of the documents may file only photocopies and produce the original for inspection, if the same are demanded by the opposite side at the stage of admission and denial. If this is the legal position then at the time of carrying out the admission and denial, it was open to the Defendant to have asked for the production of the original letter dated 09.01.2007 which was denied by him. On the contrary, the Defendant not only failed to ask for the production of the original letter but also denied existence of the letter dated 09.01.2007 which necessitated the proof of this letter by the plaintiff. This is a letter in which admission has been made by the Defendant against his own interest which will have a very vital bearing on the issues framed in the instant case.

12. It is only when the plaintiff was asked to file affidavit by way of evidence that the Defendant has chosen to raise this objection to the production of the original letter by the plaintiff along with the affidavit which has been given the exhibit mark Ex.PW1/65. The reason for discomfort of the Defendant on account of the production of the aforesaid document, along with the affidavit by the plaintiff is not far to seek. This is on account of the fact that this letter dated 09.01.2007 contains an admission purported to have been made by the Defendant against his own interest, which will be not only admissible but also have a vital evidentiary value and hence bearing on the decision as to whether the plaintiff is entitled for recover damages as claimed by him or not. It is in this context that the Defendant has now in order to wriggle out from the difficult situation raised the present objection that the letter dated 09.01.2007 be taken off the record, as

it was not produced before the settlement of the issues or alternatively that the same is not genuine on account of the writings allegedly made with the pencil at the bottom.

13. So far as the writings, which are made at the bottom are concerned, I have seen the documents and find that the writings at the bottom of the order are the internal notes of the office of the plaintiff and do not in any manner detract from the main contents of the documents, and therefore, it cannot be said that the document is either inadmissible or that its genuineness is doubtful. But this is only a prima facie view, as the Defendant is yet to cross examine the witness and during the course of cross examination, he can bring sufficient answers on record, if he so desires, to show that the document in question is fabricated, manipulated, forged, and therefore, ought not to be taken cognizance of. At this stage, I find no merit in the contention of the learned Counsel for the Defendant, that as the original document was not produced at the time of admission and denial or that the document has not been filed earlier therefore, it must be removed from the affidavit completely.

14. For the reasons mentioned above, I am of the view that the application filed by the Defendant is totally misconceived, and accordingly, the same is dismissed.

15. Expression of any opinion herein may not be treated as an expression on the merits of the case.