
(2016) 05 JH CK 0184
In the Jharkhand High Court
Case No : W.P. (C) No. 2125 of 2016

Pre-Stressed Udyog (India) Pvt. Ltd.	Vs	APPELLANT
U.I.C. Industries Ltd.		RESPONDENT

Date of Decision : 16-05-2016

Acts Referred:

Citation : (2016) 164 AIC 869 : (2017) 1 AIRJharR 402 : (2016) 4 JLJR 142

Hon'ble Judges : Mr. Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. Rohitashya Roy @ Rohit Roy, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Mr. Aparesh Kumar Singh, J.—Surviving defects are ignored.

2. Heard counsel for the petitioner.

3. Petitioner/plaintiff preferred Title Suit No. 84/2000 for declaration that there exist no express or implied contract between the plaintiff and defendant with regard to the payment of interest for delayed payment against supply of H.T.S. Wires. He also prayed for declaration that the defendant is liable to pay credit to the plaintiff the excess amount paid till the defendant gave effect to the reduced rate @ Rs. 17,790/- per MT. He consequentially prayed for money decree of the total amount along with interest.

4. It is not in dispute that the plaintiff submitted a list of documents to be adduced on his behalf which is at Annexure-2 during pendency of the suit. It is also not disputed that the plaintiff did not make any efforts to get those documents proved and exhibited. The suit was dismissed vide judgment and decree dated 30.07.2011 and 11.08.2011 (Annexure-3). Petitioner preferred an appeal being title Appeal No. 68/2011 before the learned District and Additional Sessions Judge-VIth, Dhanbad which is pending for adjudication. In the said appeal, he has filed an application in terms of Order 41, Rule 27 and another

petition under Order 6, Rule 17 read with Order 41, Rule 33 of the Civil Procedure Code. The aforesaid petitions have been rejected by the learned Appellate Court vide Annexure-7 order dated 19.02.2016 which is under challenge in the present matter. Provisions of Order 41, Rule 27 of Civil Procedure Code are being quoted hereunder for better appreciation:

"27. Production of additional evidence in Appellate Court.-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reasons for its admission."

5. Learned counsel for the petitioner has tried to make out a case that the Appellate Court instead of rejecting the application for exhibiting those documents at the outset, should have waited till the final determination of the appeal when the Court could have considered the relevance and necessity of taking those documents into account while pronouncing judgment. Reliance has been placed upon the judgment of the Apex Court rendered in the case of State of Rajasthan v. T.N. Sahani and others reported in (2001) 10 SCC 619 in support thereof.

6. I have perused the relevant materials on record and gone through the impugned order as well. It is apparent from the pleadings on record and contents of the impugned order read with the provisions of Order 41, Rule 27 CPC that the petitioner has not been able to make a case that those documents were sought to be adduced as evidence before the learned Trial Court and were refused admission which has necessitated the plaintiff/appellant to make an application before the Appellate Court. It is also apparent that these documents are not such which the appellant seeks to produce at the appellate stage as were not available despite exercise of due diligence or that were not within his knowledge at the time when the suit was in progress and before the judgment and decree was being pronounced by the learned Trial Court. It is trite to observe that neither of the parties in such proceedings is entitled to fill up the lacuna in their pleadings and evidence at the appellate stage when with exercise of due diligence, they

could have made such a prayer before the learned Trial Court itself. Contention of the learned counsel for the petitioner, based upon Order 41, Rule 27 (1)(b), is also not worthy of acceptance as these documents sought to be adduced/exhibited at the appellate stage are those which were available and could have been adduced/exhibited before the learned Trial Court. For unexplained reasons or negligence, however plaintiff has not proved or exhibited them before the learned Trial Court. Contention of the appellant that the defendant did not produce his evidence in the Trial Court as a result of which, these documents could not be exhibited, has rightly been rejected by the learned Appellate Court. The judgment relied upon by the learned counsel for the petitioner therefore, does not support the present case as the facts disclose that the petitioner has failed to adduce these very documents within his full knowledge before the learned Trial Court, though they were furnished along with the list at the relevant point of time. At this stage when the appellate proceedings are going on, petitioner cannot be allowed to cover up his lapses and fill up the lacuna in his case. Provisions of Order 41, Rule 27 (1)(b) of Civil Procedure Code therefore are not of any avail to the petitioner. This power is vested with the Appellate Court to consider whether any document is required to be produced or any witness is to be examined, so as to enable it to pronounce judgment or for any other substantial cause.

7. It further appears that by seeking amendment at the appellate stage, petitioner has sought additional prayer to convert the suit for declaration and consequential relief into a Money Suit. Reliance upon Order 41, Rule 33 of Civil Procedure Code is also of no benefit to the petitioner as exercise of such power are in different circumstances.

8. In totality of the facts and discussions made herein-above, the order impugned passed by the Appellate Court cannot be said to suffer from any error of jurisdiction warranting interference under Article 227 of Constitution of India. Writ petition is accordingly dismissed.