
(1995) 01 DEL CK 0059
In the Delhi High Court
Case No : Suit No. 3113 of 1991

Rajdhani Films (P) Ltd.

APPELLANT

Vs

Rajesh Arora and Others

RESPONDENT

Date of Decision : 09-01-1995

Acts Referred:

Citation : (1995) 57 DLT 510 : (1995) 110 PLR 1 : (1995) RLR 205

Hon'ble Judges : R.C. Lahoti, J

Bench : Single Bench

Advocate : V.K. Mishra, V.N. Kalra and U.N. Sharma, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) The suit was filed on 28.9.91. Written the suit was filed on 28.9.91. Written statement was filed on 12.3.1993. On 14.9.1993, four weeks time was allowed to the parties for filing the documents. Admission/denial of documents was carried out on 20.1.1994, 21.1.1994 and 24.1.1994. Issues were framed on 24.10.1994. The Court allowed six weeks time to the parties for filing the list of witnesses before posting the case for trial. At this stage, both the learned Counsel for the parties have insisted on time being allowed for filing "further documents" by reference to Chapter Viii, Rule 5(2) of Delhi High Court (Original Side) Rules, 1967.

(2) Learned Counsel for the parties were asked about the nature of documents which they proposed to file. It was stated by the learned Counsel that they were "free "to "file any documents" considered by them to be relevant and for that purpose they were entitled to an adjournment as of right. This was not only contemplated by rules but this has also been the practice consistently followed in the High Court of Delhi (Original Side) submitted the learned Counsel.

(3) I have heard them on the question whether after the framing of issues, when the stage for filing of the documents was already over, the parties could be permitted to file "further documents" as of right, and if so, the nature of

documents permissible to be filed.

(4) Delhi High Court (Original Side) Rules have been framed in exercise of the power conferred by Sections 122 and 129 of the Code of Civil Procedure, 1908 and Section 7 of the Delhi High Court Act, 1966. In case of conflict, the Original Side Rules framed by High Court would override the provisions of CPC (See- Print Pak Machinery Ltd. Vs. Jay Kay Papers Conveters,

(5) The High Court exercising its original jurisdiction is a Civil Court. It is governed by the provisions of the Code of Civil Procedure. However, the Original Side Rules (hereinafter Os Rules, for short) have been framed with the idea of supplementing the provisions of the Code of Civil Procedure. They would override such provisions of CPC as may be inconsistent with the Os Rules. The object behind framing of the rules was obviously to provide the Judge with a more firm grip over the trial so as to make it more expeditious because a Court of higher status, seized of matters of higher denomination assisted by the members of the High Court bar or the Counsel appearing on the original side being better equipped and well conversant with .the civil law - substantive and procedural - the cases arc expected to be tried with more expedition, avoiding prolixity and laxity at the trial. The Os Rules have to be interpreted with that underlying object in view ,avoiding any such interpretation as would result in contributing delay or laxity otherwise avoidable at the trial.

(6) Let the relevant provision of the CPC be examined in the first instance. Order 7 Rule 14 CPC enjoins a plaintiff suing upon any document in his possession or power to be produced with the plaint. Documents though not basis of suit but on which the plaintiff relies, whether in his possession or power or not, have to be listed and the list annexed with the plaint. Rule 18 provides penalty of exclusion of such documents from trial (except with the leave of the Court) upon the plaintiff if not filed or listed in accordance with Rule 14.

(7) The documents relied on by a defendant, whether in his possession or power, in support of his defense, set off or counter claim have also to be listed and the list filed with the written statement. If the documents be not in possession or power of the defendant it has to be mentioned in whose possession or power they are .The Court may grant time for filing such list. Default on the part of the defendant would invite the penalty of documents being excluded from evidence on behalf of the defendant except with the leave of the Court.

(8) Order 13 Rule 1 CPC enjoins all the documentary evidence of every description in possession or power of the parties, if intended to be relied on, to be produced at or before the settlement of issues.

(9) The provisions clearly demonstrate the necessity of documents forming the basis of the suit being filed in the Court along with the presentation of plaint and the documents though not basis of the suit but relied on by either party being brought on the record of the case at or before the settlement of issues.

(10) There is yet another category of documents, which, though relevant at the trial, may not be required to be filed With the plaint or written statement or even at or before settlement of issues. These documents may broadly be categorised as under:-

(1) Documents handed - over to the witnesses for the purpose of refreshing memory but not to be relied on by either party in support of its own case.

(2) Documents produced only for the purpose of cross-examination by either party's witness such as when a witness turns hostile and is permitted to be cross-examined.

(11) The plaintiff may have documents which are neither the basis of the suit nor relied on by him in support of his case yet he may be inclined to produce them in the Court in answer to any case set up by the defendant. These documents would also be covered by Order 13, Rule I CPC. Having become aware of the pleas raised in the written statement, the plaintiff is rightly expected to bring them on record at or before settlement of issues.

(12) Now, the provisions in Os Rules may be examined.

12.1. Chapter Iii, Rule 5 is a general provision contemplating English translation of all documents in a language other than English not to be received unless accompanied by English translation. A suit or other proceeding will not be set down for hearing until and unless English translation of documents intended to be relied on has been filed. 12.2. Ch. Iv entitled - Presentation of Plaint and other documents" refers to documents in Rules 1 and 2, in the context of the plaint, without mentioning the nature of documents. Obviously the reference is to such documents as are contemplated by Order 7, Rule 14 CPC. 12.3. Ch. Vi, Rule 5 speaks of List of documents" in the context of written statement again without mentioning the nature of documents. Obviously the light has to be taken from Order 8, Rule I Sub-rules (2) and (3). 12.4. Chapter Iv (and other provisions too) contemplate all pleadings and even Indian Administrative Service being served on the opposite party accompanied by documents forming part of the pleadings or applications. 12.5. Chapter Viii, Rule 1A is pan materia with Order 13, Rule 1 CPC requiring both the parties to file in the Court on the date appointed for appearance all documents in their power or possession upon which they intend to rely. Copies of the documents are to be exchanged between the parties as per Rule IB. 12.6. The entire scheme of the Os Rules contemplates documents being filed by the parties and also being served on the opponents at the earliest possible opportunity. So much so that by the time the stage has come when the Court may conduct admission/denial of documents between the parties it may even pronounce judgment at the first hearing. If the suit be not capable of being disposed of at the first hearing and issues are to be framed, the Court may frame the issues. The issues maybe determined forthwith followed by a judgment. If the findings are not sufficient for decision, the Court shall adjourn the matter directing the parties to file a list of witnesses. All these things shall be

done keeping in view the basic documents and the documents of reliance, also whether they have been admitted or not ?12.7. Now, Chapter VIII, Rule 5(2) .-"Parties shall along with the said list (list of witnesses) file further documents if any. They shall also indicate the particular fact or documents which is sought to be proved by the evidence of witnesses. After examining the list, the Court shall give directions as to the hearing of the suit.

(13) Whether "further documents" is wide enough to cover all and any documents, including the documents of reliance? If "further documents" were to be interpreted so widely then the whole idea behind insisting on production of documents at the earliest and not beyond the first hearing before settlement of issues ,shall all be lost. Parties may file pleadings, may not file any document and there by avoid admission/denial of documents. The Court may frame issues. Then the parties would file all documents which they may wish to do in the name of "further documents". This would defeat the object of expeditious trial and an unscrupulous litigant would be able to set at naught the whole progress of the suit till that day by bringing it on record a number of documents in the garb of" further documents .The Os Rules could never have intended such a result.

(14) What is the effect of non-production of a document at the stage meant for its production ?

14.1.A document on which a plaintiff has not in terms sued and which is not produced in Court when the plaint is presented, can only be treated, if subsequently produced, as a piece of evidence and not as creating any rights in favor of the plaintiff. (See (Jaggupilla) Narayanamurti and Another Vs. (Jaggupilla) Suryanarayana and Others, . Non-production of document with the pleadings or at the first date of hearing (before settlement of issues) reasonably gives rise to two inferences. First, its genuineness is open to question. Secondly, it may be assumed against the party producing the document later that it did not want the opposite party to be subjected to admission/denial of document before the issues were struck.14.3. The documents essential to the claim or defense and the documents of reliance if not produced at an appropriate stage and sought to be produced as "further documents" suffer two risks. Production at an appropriate stage is as of right and Court is bound to receive the document without hearing the opposite party .Document not produced at appropriate stage but sought to be produced as "further document" may not be received by the Court unless its earlier non production is satisfactorily explained, on affidavit or otherwise and in forming an opinion on the acceptability of Explanation the Court may hear the opposite party as well. Such further document the Court may treat merely a piece of evidence and not a document creating any right.

(15) In the opinion of this Court the words "further documents" as occurring in Rule 5(2) of Chapter VIII of Os Rules contemplate the following two broad category of documents:

(1)Such documents as are neither the basis of the plaintiff's suit, (Order 7,Rule

14 CPC) nor the documents intended to be relied by either party at the trial, (Order 13, Rule I CPC),(2) The documents though forming the basis of the suit or intended to be relied by either party at the trial, and not filed either with the plaint or at the first hearing of the suit and as to which though a party has lost the right of filing in the Court as of right yet on the delay being explained or sufficient cause being shown to the satisfaction of the Court, the Court may be inclined to admit subject to such terms as it may deem fit. In other words the documents contemplated by Order 7, Rule 18 or Order 13, Rule 2 CPC.

(16) The Os Rules do not contain provision equivalent to Order 7, Rule 18 and Order 13, Rule 2 CPC and there being nothing inconsistent therewith in the Os Rules, these provisions of CPC will continue to apply to trial of suits on the Original Side. This has been conceded to by the learned Counsel.

(17) Rule 5(2) provide an occasion for entry of documents only by way of exception and not as of right. It can be safely assumed that a plaint would be drafted only after looking into documents forming basis of suit. So a written statement will be drafted by looking into documents on which defense is based. Pleadings having been exchanged, the parties know well or must know the documents on which they would rely and so must be ready with them. That is why they are expected rather obliged, to file all such documents on the first date of hearing. Rule 5(2) warns and alerts the parties to re-scrutinize their briefs once again and if they notice any documents being the basis of suit claim/counter claim or defense and not filed till then, though should have been, to file them seeking leave of the Court, explaining satisfactorily the default of not filing earlier. The High Court exercising original jurisdiction would not ordinarily, and certainly not lightly ,permit documents being produced once the case is fixed for trial as such indulgence ,if shown, thwarts the progress of trial. Documents not covered by the two categories above said and yet required to be filed may also be filed as " further documents .

(18) The case be now listed on 16-2-1995 for filing the list of witnesses and "further documents" as above said (Ch. VII, R.5(2) Os Rules).