

(1995) 02 BOM CK 0055

In the Bombay High Court

Case No : Civil Revision Application No. 8 of 1995

Ramada Hotels (India) Ltd.

APPELLANT

Vs

Sunrise Emporium

RESPONDENT

Date of Decision : 17-02-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1996) 5 BomCR 540

Hon'ble Judges : E.S. Da Silva, J

Bench : Single Bench

Advocate : Soli Doctor, S.A., S. Mehata and S.S. Kantak, for the Appellant;
Joaquim Reis and S.V. Kamat, for the Respondent

Judgement

E.S. Da Silva, J.—I see no merit in this revision.

2. Upon hearing learned counsel at length and perusing the records I am of the view that the impugned Order dated 1st December, 1994 does not suffer from any error or illegality deserving unsettlement or modification by this Court in discharge of its revisional authority.

3. The exercise of powers u/s 115 of the CPC cannot affect any error of law or fact other than the one which involves jurisdictional error. The mere wording of the aforesaid section 115 gives a clear indication that the High Court in the discharge of such powers can interfere only when it appears that the Court below has exercised jurisdiction not vested in it by law or has failed to exercise jurisdiction so vested or has acted in exercise of jurisdiction illegally or with material irregularity. Being so the question of Court interfering with the findings of fact or law recorded by the courts below when such error or jurisdiction is not to be seen or the exercise of jurisdiction has been discharged by the courts within the frame of law and according to the proper procedure does not even arise.

4. In the instant case I am satisfied that the particulars of facts sought for by the

petitioner are of the type which are deemed to be held as being of their own knowledge in as much as the facts pleaded by the respondent cannot be said as having not been unfolded with sufficient precision and certainty so as to put the petitioner on an adequate position to reasonably understand the case purported to be made by the respondent in order to enable the petitioner to effectively meet the same at the time of the trial.

5. It is to be seen that we are still at the stage of the petitioner's filing their written statement and reply to the interim relief and in this regard it is difficult to appreciate the petitioner's learned Counsel's contention that whatever has been stated by the respondent in its plaint and application for interim injunction is vague as to pre-empt the petitioner from defending the suit or taking a definite stand as far as the prayer for temporary relief is concerned. If what the respondent has averred in the plaint as well as in the application is not true it is for the petitioner to deny the facts pleaded by it or if it chooses give its own version on the matter in order to lay down the correct perspective.

6. It is an admitted position that the petitioner is only bound to set up in its pleadings material facts of its case which are meant to ascertain definitely what is the real question at issue between the parties and such particulars certainly depend on the facts of each case. In my judgment the details sought for by the petitioner appear to be more in the nature of an attempt to get the respondent to disclose its evidence even before the trial starts which is certainly not permissible in law.

7. So far the prayer put up by the petitioner in para (v) of its letter dated 11th December, 1983 the respondent has already made it clear that it is not going to rely upon any letters other than those mentioned in the plaint and if any such other documents are available or discovered or found to be relevant before the hearing of the suit their discovery and inspection may be sought for by the petitioner after following the correct procedure as per the law. This means that the respondent need not disclose to the petitioner further information regarding any other letter beyond the ones which are mentioned in the list of documents since nothing of that sort is going to be relied on for the purpose of establishing its case.

8. Similar is the position with regard to the meetings (prayer ix) which are said to have been held between the respondent's Partner and the petitioner's Managing Director and the particulars sought for by the petitioner about the date, time and place of the meetings and also whether besides the abovementioned names some other person attended those meetings.

9. In respect of the prayer for inspection of documents the respondent has also expressed its willingness to make the documents available for inspection with prior appointment to be sought for by the petitioner irrespective of the fact that a xerox copy of the carbon copy of the draft agreement is said to have been already forwarded to the petitioner.

10. This being the case it is obvious that no perversity, illegality or error of jurisdiction appears to have been committed by the learned trial Judge so as to merit interference u/s 115 of the Civil Procedure Code. Hence rejected with costs.