
(1987) 07 RAJ CK 0043

In the Rajasthan High Court

Case No : Civil Revision Petition No. 657 of 1985

Ravindra Bal Niketan Samiti, Sikar and Others

APPELLANT

Vs

Smt. Sushila Shrivastava and Another

RESPONDENT

Date of Decision : 23-07-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 12, Order 11 Rule 13, Order 11 Rule 14, Order 39 Rule 1, Order 39 Rule 2

Citation : AIR 1988 Raj 177 : (1988) 1 RLW 15 : (1988) 1 WLN 74

Hon'ble Judges : D.L. Mehta, J

Bench : Single Bench

Advocate : D.P. Chadha, for the Appellant; R.C. Joshi, for the Respondent

Judgement

D.L. Mehta, J.—Heard learned counsel for the parties perused the order dt. 5-9-85 passed by the Court below.

2. Plaintiff instituted a suit against the present petitioners defendant for the declaration that her services have wrongly been terminated and she is still the employee of the institution.

3. Application under Order 39, Rules 1 and 2 was filed by the present petitioner 1. The petitioner also moved an application under Order 11, Rule 12 as well as under Order 11, Rule 14. The application was granted and the present petitioner has been directed to produce the documents in the court.

4. Mr. Chaddha appearing on behalf of the present petitioner defendants submitted that application under Order 11, Rule 12 and 14 cannot be submitted in miscellaneous application filed in a suit for the grant of temporary injunction. Order 11, Rule 12 provides that any party may apply to the court for directing any other party to a suit to make discovery on oath of the documents which are or have been in his possession or power relating to any matter in question therein. After hearing the parties, the court if satisfied may pass an order and direct the opposite party to submit the affidavit under Rule 13. Mr. Chadha has

cited before me the case of Rathindra Nath Bose Vs. Jyoti Bikash Ghosh and Others, . Their Lordships have held as under:--

"It was contended that the proceedings under Order 9, Rule 9 was in the nature of an original proceeding as was held in the case of Salil Kumar Banerjee Vs. Sailendra Ghose and Others, and the procedure of the Code is applicable to it as provided in Section 141, so that the order of the trial Court would be one under Order 39 though in a proceeding and not in suit and thus appealable. It would however, appear that "proceedings in any court of Civil Jurisdiction has been held to be original matter like probates, guardianships and so forth as observed in Thakur Pershad Fakirullah (1895) 22 IA 44 (PC) or divorce, insolvency. This provision includes original matters which originate in themselves and not those which spring up from a suit or from other proceeding or arise in connection therewith. This was the view taken in the Bench decision of this Court in Sarat Krishna Bose Vs. Bisweswar Mitra and Others, The contention of Mr. Mitra is thus not tenable."

Mr. Chadha's contention is that the provisions of Order 11, Rule 12 only applies in the matters which originate in themselves and not those which spring up from a suit or other proceedings or arise in connection therewith. It will not be out of place here to mention that to avoid the controversy which may arise in such matters the explanation u/s 141 has been added vide Amending Act, 1976. Explanation provides that in this section the expression "proceedings" includes the proceedings under Order 9". Thus, the citation which has been cited by Mr. Chaddha loses its importance after the amendment of the C.P.C. The explanation is only explanatory and starts with the word "includes". Thus, the word "includes" enlarges the scope of Section 141 C.P.C. and in proceedings of a miscellaneous nature which arise in a suit fall within the definition of Section 141 C.P.C. The explanation has been added in the C.P.C. to avoid the difficulties of the litigants and multiplicity of proceedings. If an application is filed in the original suit and the temporary injunction application is disposed off without the assistance of the original file then there will be chaos. The assistance of the original file is always taken while deciding the applications under Order 39, Rules 1 and 2. Application under Order 39, Rules 1 and 2 is a part and parcel of the suit and it cannot be excluded. After the adding of the explanation there remains nothing to be argued and the court was justified in applying the provisions of Order 11, Rule 12. The application of the present non- petitioner plaintiff relating to Order 11, Rule 12 should be accepted and the present petitioner defendant is directed to file an affidavit under Order 11, Rule 13.

5. Mr. Chaddha has also cited before me the case of Shri M.L. Sethi Vs. Shri R.P. Kapur, Their Lordships have held as under : --

"When the Court makes an order for discovery under the rule, the opposite party is bound to make an affidavit of documents and if he fails to do so, he will be subject to the penalties specified in Rule 21 of Order 11. An affidavit of documents shall set forth all the documents which are, or have been in his

possession or power relating to the matter in question in the proceedings. And as to the documents which are not, but have been in his possession or power, he must state what has become of them and in whose possession they are, in order that the opposite party may be enabled to get production from the persons who have possession of them (see Form No. 5 in Appendix-C of the Civil Procedure Code). After he has disclosed the documents by the affidavit, he may be required to produce for inspection such of the documents as he is in possession of and as are relevant."

6. I have gone through the citation cited by Mr. Chadha. It does not lay down the guidelines to this extent that the court has no power to direct the production of the documents which are in the possession and power of the other party. It only provides that if an order under Rule 12 has been made the other party may make an application under Rule 14 and the court may direct for the production of the documents. Rules 12 and 14 of Order 11 are independent of each other and it is not necessary in every case that first of all the application under Rule 12 should be made and after the decision of the application so made under Rule 12 and after filing of the affidavit under Rule 13 by the opposite party the application under Rule 14 should be moved. Some times the Court may entertain an application under Rule 14 directly without an application under Rule 12. Rule 14 provides that it shall be lawful for the Court at any time during the pendency of any suit, to order, the production by any party thereto upon, oath of such document in his possession or power, relating to any matter in question in such suit as the Court shall think right. Mr. Chadha submits that the application under Rule 14 should be accompanied with an affidavit for the satisfaction of the Court. Under Rule 14, though it has not been specifically mentioned that the application should be accompanied with an affidavit but in Appendix-C relating to discovery, inspection and admission a there is a Form-6 Form-6 reads as under-

"Upon hearing..... and upon reading the affidavit of.....filed the..... day of.....19. It is ordered that the..... do, at all reasonable times, on reasonable notice, produce at..... situate at..... the following documents, namely..... and that the..... be at liberty to inspect and peruse the documents so produced, and to make notes of their contents. In the meantime, it is ordered that all further proceedings be stayed and that the costs of this application be".

7. Thus, Mr. Chadha submits that the affidavit is a must as it has been referred to in Appendix-C Form-6. Mr. Chadha has cited before me the case of National Rice and Dal Mills, Rajpur v. Suraj Singh AIR 1975 HP 12, inwhichithasbeenheldasunder : --

"It is also evident from Form No. 6 in Appendix-"C" to the Code that an affidavit is contemplated when an application is made under Order 11, Rule 14. In the present case, it does not appear that any attempt was made to file an affidavit. In the circumstances, the learned Senior Subordinate Judge was entitled to reject the application, and his order doing so does not call for interference. It is, however, open to the defendant to file a fresh application under Order 11, Rule

14 supported by an affidavit. The trial Court will then consider the application."

8. I agree with the view taken by the Himachal Pradesh High Court that ordinarily the application should be accompanied with an affidavit. In the case of National Rice and Dal Mills, Rajpur (supra) the application under Order 11, Rule 14 was dismissed by the Court of the Subordinate Judge on the ground that no affidavit has been filed with the application. The learned Subordinate Judge had the jurisdiction to reject the application on the ground that no affidavit has been filed in spite of repeated opportunities. In the instant case, such opportunity was not given to the present non-petitioner. On the contrary, no such objection was also raised in the court below. Appendix-C is a directory in nature and not mandatory. The direction should be fulfilled as far as practicable and particularly when objection is raised by the opposite party. In the absence of an objection in the lower Court the court considered it proper to issue direction for the production of the documents referred in the application. Directions so issued are not vitiated only on account of non-filing of the affidavit which was not objected to even by the present petitioner in the court below. In such circumstances, no question of jurisdiction is involved in it. The Court had the jurisdiction to issue necessary orders and the Court has rightly issued the directions for the production of the documents.

9. I do not find any force in the submissions made by Mr. Chadha. It was observed by Mr. Chadha that it is necessary to file affidavit to show that the documents are in his possession or power. Affidavit is an evidence on oath for some purpose. Order 11, Rule 14 further provides that the party against whom the order has been made shall produce the documents on oath. In such circumstances, he can make a statement on oath that these documents are available with him or these documents are not available with him and they are not in his possession or power.

10. In the facts and circumstances of the case, the revision petition is disposed off accordingly. The parties are directed to appear before the Court below on 17th August 1987.