

(1990) 05 GAU CK 0017

In the Gauhati High Court

Case No : Civil Revision No. 108 of 1990

Steel Authority of India Limited

APPELLANT

Vs

Ashok Industries

RESPONDENT

Date of Decision : 21-05-1990

Acts Referred:

Civil Procedure Code, 1908 — Order 13 Rule 1, Order 8 Rule 1
Civil Procedure Code, 1908 (CPC) — Order 13 Rule 1, Order 8 Rule 1

Citation : (1990) 2 GLJ 222 : (1992) 1 GLR 32

Hon'ble Judges : R.K.Manisana Singh, J

Bench : Single Bench

Advocate : U.Das , S.N.Sharma, P.Barthakur, J.P.Bhattacharjee, D.N.Choudhary, A.R.Barthakur, B.Acharyya, Advocates appearing for Parties

Judgement

1. This revision petition is against an order dated 14.3.90 passed by the Assistant District Judge, Tinsukia in Money Suit No. 122 of 1986 rejecting the application made for filing documents.

2. Facts giving rise to the petition, in brief, are thus. After closure of the examination of the plaintiff's witnesses, the defendant filed an application for allowing him to file nine (9) documents enumerated in the list on the ground that the said documents could not be filed for the following reasons. The Tinsukia Office of the defendant was wound up in the year 1982 and thereafter some of files were sent to the record room, some to Gauhati Office and some to Calcutta Office, and as such, the documents could not be traced. However, the defendant somehow could trace out some of the documents only a week back though not all. The trial Court allowed defendant to file the document in serial No I and rejected the prayer for filing other documents. Hence this petition.

3. Mr. J.P Bha tacharjee, the learned counsel for the petitioner, has submitted that the trial Court has exercised his jurisdiction illegally or with material irregularity, and that the trial Court ought to have allowed all the documents to be filed as no prejudice would cause to the plaintiff. Mr. A.R. Barthakur, the

learned counsel for the respondent, has contended that the examination of the witnesses of the plaintiff has been closed and, therefore, the plaintiff would not be in a position to rebut the documents if allowed to be produced. Mr. Barthakur has further contended that the suit has been pending for the last about eight (8) years. The examination of the witnesses of the plaintiff has been closed and, at this stage, if the documents are allowed to be filed, "it will cause prejudice to the plaintiff.

4. The trial Court rejected the petition, as already stated, on the ground that pleas of the defendant are self contradictory and consequently the explanation for belated production of the documents are unsatisfactory and, therefore, it does not constitute a good cause.

5. The defendant failed to enter the documents in the list filed by him along with the written statement under O 8, R 1 and the defendant also failed to produce the documents in accordance with the provision under O 13, R 1. The effect of such failures of the defendant is provided under O 8, R 8 A and O 8, R 2. O 8, R 8 A provides that the documents which ought to have been produced in Court by the defendant under O 8, R 1, but is not so produced, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. O 13, R 2 provides that no documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirement of O 13, R 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for nonproduction thereof. Therefore, if sufficient cause or good cause is shown to the satisfaction of the Court, the documents can be accepted.

6. The object of the rules referred to above is merely to prevent the belated production of the documents so that there may not be delay in trial and it may not work injustice to the other side. However, the above provisions empower the Court with discretion to allow to produce the documents, if it is satisfied that sufficient cause or good cause is shown to its satisfaction. The discretion should, however, be exercised for the cause of substantial justice.

7. Keeping the above principle in view, let me now examine the case on hand. The ground for rejection was that the pleas of the defendant were self contradictory. The trial Court has observed that the documents were not mentioned in the written statement, the documents were also not entered in the original list of documents, submitted, and in the written statement it was not stated that the documents were not traceable and would be produced later, but the defendant has come forward stating that they were not traceable. Therefore, it is selfcontradictory and no good cause has been shown.

8. As regards ""contradiction", where there are two statements, they are so inconsistent or irreconcilable with each other that both of them cannot exist, it may be said one contradicts the other. Be that as it may, under the rules referred to above the document, which has not been entered in original list filed along

with written statement under O 8 R 1 and/or which has not been produced in accordance with the provisions under O 13 R 1, can be permitted to be filed at later stage of hearing, if sufficient cause or good cause is shown to the satisfaction of the Court. Therefore, the alleged contradiction as has been held by the trial Court, is irrelevant. In such a situation, the finding of the trial Court that the pleas are contradictory to each other and, therefore, no good cause has been shown is based on illegal assumption of law. Therefore, the trial Court has exercised its jurisdiction illegally or with material irregularity and as such, the impugned order is liable to be set aside.

9. The next question which arises for consideration is whether sufficient cause has been shown. Admittedly, one of the documents has already been allowed to be filed for the reasons given in the impugned order. The case of the defendant is that he could not trace the documents. The statement is supported by an affidavit. There is no presumption that failure of the defendant is deliberate. The defendant would not be benefited by resorting to delay. I am of the view that sufficient cause or good cause has been shown by the defendant.

10. For the foregoing reasons, the petition is allowed and the impugned order is set aside. The petitioner is allowed to file all the documents enumerated in the list subject to the payment of Rs. 200/ (Rupees two hundred) only to the plaintiff by the defendant. However, the plaintiff shall be given an opportunity to lead evidence in rebuttal.