
(2007) 05 P&H CK 0077
In the Punjab And Haryana At Chandigarh

Steel Authority of India Ltd.

APPELLANT

Vs

Steel Strips and Tubes Ltd.

RESPONDENT

Date of Decision : 04-05-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2007) 4 PLR 236 : (2007) 3 RCR(Civil) 635

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The present revision petition has been filed against the order dated 20.11.2006 passed by the learned Civil Judge (Jr. Div.), Chandigarh dismissing the application filed by the defendant-petitioners under Order 47, Rule 1 read with Section 151 of the CPC for recalling the orders for issuing summons dated 19.8.2004 and 21st August, 2004 hereby the office clerk of the defendant-petitioners was directed to produce the record as required by the plaintiff-respondent and further order dated 4.9.2004 whereby Shri M.K. Aggarwal, the official of the applicant-defendants was summoned through bailable warrants.

2. The petitioners filed the present application on the plea that the order summoning the witness was obtained by the respondent-plaintiff in routine manner by suppressing the material facts and without disclosing that an earlier application moved by the plaintiff under Order 11 Rule 12 of the C.P.C. seeking a direction to the defendants to produce the record mentioned therein was dismissed vide order dated 23.12.2003.

3. It was the case of the petitioners that after dismissal of the said application, the plaintiff-respondent by means of the summons sought production of the documents which have already been denied.

4. The application was contested by the plaintiff-respondent on the plea that the provisions of Orders 11 Rules 12, 14 and 15 of the C.P.C. are independent to

each other. Rule 15 applies only when the opposite party claims inspection and copies of documents. It was the case of the plaintiff-respondent that as the petitioners have referred to certain documents in the pleadings, therefore, it was open to the respondent to ask for inspection and production of these documents. It was the case of the plaintiff-respondent that as the plaintiff-respondent has applied for discovery and production of the documents, the original of which, were in their possession, the same was rejected by observing that the plaintiff has to prove his own case. Thereafter an application under Order 26 of the CPC was moved for summoning and attendance of the witnesses by claiming that the plaintiff has an independent right to summon and examine the witness to prove his case which could not be allowed in view of earlier order.

5. The learned trial Court rejected the plea to recall order dated 4th September, 2004 by observing that Shri M.K. Aggarwal, who was summoned as a witness, has refused to accept service and, therefore, bailable warrants of arrest were issued for securing his presence in the Court. However, in view of the application by the petitioners herein the said order of issuance of bailable warrants was recalled on 13.10.2004. The learned trial Court, therefore, took notice of the nature of the case and accordingly came to the conclusion that in order to prove the case set up by the plaintiff, the witnesses, who are the officials of the defendant-petitioners have been summoned. The objection regarding non-submission of the list of witnesses was negated by holding that now the said list has been filed in the Court. The Court further held that the procedural laws are made for advancement of justice and not to shut down the doors of justice. Therefore, in view of the pleadings of the parties, the order passed for summoning the witnesses was upheld and the application filed by the defendant-petitioners herein was rejected.

6. The learned Counsel for the petitioners has challenged the said order primarily on the plea that the impugned order is contrary to the provisions of Order 16, Rule 1 of the Code of Civil Procedure. The contention of the learned Counsel for the petitioners is that the plaintiff-respondent has failed to give list of witnesses, therefore, the assistance of the Court was not required to be given as it was open to the respondent-plaintiff to have examined those witnesses at his own responsibility. In support of this contention, learned Counsel for the petitioners placed reliance on the judgment of the Hon'ble Supreme Court in the case of Lalitha J. Rai v. Aithappa Rai 1994 (4) S.C.C. 244, wherein it has been held as under:

3. Order 16 Rules 1 and 1-A adumbrate that the witnesses at the trial Court are to be produced for examination by the parties by their filing the list, and omission thereon prohibits them to avail the assistance of the court to secure their attendance to give evidence or to produce documents on their behalf. It is true that the legislature amended Order 16 Rule 1 added Rule 1-A to see that the undue delay should not be caused in the trial of the suit by filing the list of witnesses or the documents at a belated stage. Thereby it envisages that on or

before the date fixed by the Court for settlement for issues and not later than 15 days after the date on which issues were settled, the parties are to file the list of such witnesses whom they propose to call either to give evidence or to produce documents and they are required to obtain summons to such witnesses for their attendance in the Court. On their failure to do the same, Rule I says that they may without assistance of the Court bring witnesses to give evidence or to produce documents. In other words, if they fail to obtain the summonses through Court for attendance of witnesses they are at liberty to have the witnesses brought without the assistance of the Court.

4. It would, thus, be seen that the legislature did not put a total prohibition on the party to produce the witnesses or the production of the documents for proof of the respective case. Nonetheless, when they seek the assistance of the court, they are enjoined to give reasons as to why they have not filed the application within the time prescribed under Rule 1 Order 16. It is seen that in the application it was stated by the husband of the appellant that they were under the bona fide impression that they have already filed the list of the witnesses along with the documents and that the mistake of non-filing the list was discovered when they were getting ready for the trial. It is not in dispute that the trial is yet to begin. In these circumstances, we think that the trial Court committed illegality in refusing to receive the list for summoning the witnesses for adduction of evidence by the plaintiff. The appeal is accordingly allowed. The orders of the trial Court and the High Court are set aside. The list already furnished is a valid list. The trial Court is directed to summon the witnesses for examination on behalf of the plaintiff.

I find no force in the contention raised by the learned Counsel for the petitioner. The Hon'ble Supreme Court nowhere laid down that for advancement of justice, the witness cannot be examined, if the list of witnesses was not given. The Order 16, Rule 1 of the C.P.C. cannot be said to be mandatory, but only directory and the learned trial Court, therefore, was right in coming to the conclusion that the procedural laws are meant for advancement of justice and not to subvert the same.

7. The learned Counsel for the petitioners thereafter placed reliance on the judgment of the Hon'ble Kerala High Court in the case of Jortin Antony and Others Vs. Padmanabha Dasa Marthanda Varma and Others, to contend that a party does not have a right to summon the opposite party to give evidence. It is for the Court that after the evidence is led by the parties to consider whether any witness is required to be examined for just and proper adjudication of the case.

8. Learned Counsel for the petitioner also submits that it is only the Court which can compel the other party to depose in the case in the interest of justice and it is not open to the party to summon the opposite party for giving evidence, This authority does not advance the case of the petitioners as in the present case the plaintiff has summoned his own witness and not witness of the other party as is sought to be projected by the learned Counsel for the petitioners. Thus, there is

no force in the contention raised by the learned Counsel for the petitioners. The order passed by the learned trial Court does not suffer from any jurisdictional error which may call for interference by this Court in exercise of its revisional jurisdiction.

Dismissed.