

(1956) 02 PAT CK 0006
In the Patna High Court
Case No : Civil Revision No. 730 of 1954

Union of India (UOI)

APPELLANT

Vs

Dwarkadass Radha Krishna Oil Mill

RESPONDENT

Date of Decision : 13-02-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 1, Order 13 Rule 2

Citation : AIR 1957 Patna 688

Hon'ble Judges : Rai, J;Kanhaiya Singh, J

Bench : Division Bench

Advocate : P.K. Bose, for the Appellant; U.N. Sinha, for the Respondent

Final Decision : Allowed

Judgement

Kanhaiya Singh, J.—This is an application for revision of the order of Shri K.N. Singh, Additional Subordinate Judge Dumka dated the 17th day of July, 1954, by which he refused permission to the petitioner to adduce evidence on merits of the case and restricted the additional evidence to be adduced in rebuttal by the petitioner to the factum of the service or otherwise of the notice u/s 80 of the Code of Civil Procedure. The facts leading up to this application are these.

The opposite party instituted in 1951 Money Suit No. 20/10 of 1951/54 for recovery from the petitioner, who is the Union of India, of Rs. 19,820 on account of the price including incidental charges, of a consignment of 249 bags of mustard seeds weighing 529 mds. 5 srs. on the ground of non-delivery. The consignment was booked at Barley and was deliverable to the opposite party at Sahibganj. The petitioner resisted the claim substantially on the ground that the non-delivery of the consignment occurred due to circumstances beyond the control of the Railway.

It was alleged that when the consignment reached Moghalsaral, the card labels of the wagon were altered by some miscreants so as to read Patna City in lieu of Sahibganj, with the result that the consignment was taken to Patna City where

its delivery was taken by some person on the strength of a railway receipt which was subsequently found to be forged.

2. One of the specific pleas raised by the petitioner was non-service of the notice u/s 60 of the Code of Civil Procedure. The hearing of the case was taken up on 23-6-1954 and was concluded on 24-6-1954 and the Court adjourned the case to 29-6-1954 for judgment. Thereafter, the opposite party produced on 26-6-1954 a registration receipt and also a postal acknowledgment receipt in proof of the service of the notice u/s 80, Civil P.C. The petitioner objected to the admission of the evidence after the conclusion of the hearing. The Court, however, disallowed the objection and admitted the documents in evidence on 29-6-1954. The petitioner then filed an application on 17-7-1954, for examination of the witnesses who had not been examined.

The Court, however, rejected the prayer of the petitioner and fixed 23-8-1954 for production by the petitioner of evidence respecting service of notice u/s 80, Civil P. C. only.

3. The Government Advocate contended that the order of the Court refusing permission to examine witnesses on questions other than the service of notices u/s 80, Civil P.C., was made in irregular exercise of jurisdiction and it would result in manifest injustice to the petitioner. It is pointed out that all the witnesses of the petitioner, except those belonging to Moghalsarai and Patna City were ready on the date of the hearing, namely 23rd and 24th June, 1954, and the witnesses of Moghalsarai and Patna City, who were absent were important witnesses and their evidence was absolutely essential to prove the defence set up by the petitioner.

Since, however, the evidence adduced by the opposite party was not sufficient to establish affirmatively the service of the notice u/s 80 of the Code of Civil Procedure, which was fatal to the suit, the petitioner, acting on legal advice, did not apply for adjournment of the hearing for examination of the absent witnesses in order to avoid unnecessary waste of Court's time. It is said that the Additional Evidence on the merits of the claim was necessitated in consequence of the admission by the Court of further evidence in proof of the service of the notice u/s 80, Civil P.C., after the petitioner had closed its case.

The Government Advocate contended that if the opposite party had not adduced the aforesaid additional evidence the petitioner would not have pressed for permission to adduce further evidence in support of the defence. On the other hand, Mr. U.N. Sinha contended that Rule 2 of Order 13 of the CPC vested in the Court a discretion, to accept documentary evidence even at that late stage and the exercise of the discretion by the Court cannot be said to be arbitrary and perverse, and therefore the order is not revisable by this Court.

4. In my opinion, the contentions raised by the Government Advocate on behalf of the petitioner are well-founded. Rule 1 of Order 13 enjoins on the parties to produce all the documentary evidence in their possession at the earliest possible

opportunity, i.e., at the first hearing of the suit or where issues are framed, on the day when the issues are framed, or within such further time as the Court may permit. This rule, however, does not take away the discretion of the Court to receive documents at a later stage of the hearing also.

But such evidence cannot be accepted in absence of satisfactory explanation of the delay, and this is what is laid down by Rule 2 which 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 requirements of Rule 1, shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof; and the Court receiving any such evidence shall record the reasons for so doing. Rule 2, therefore, provides for admission of documentary evidence even at a late stage of the hearing in exceptional circumstances.

This rule, however, does not prescribe the scope and the extent of the additional evidence that may be adduced by the other party in rebuttal of the documentary evidence so admitted. The petitioner is not disputing the decision of the Court to receive documentary evidence even at a subsequent stage of the proceeding on good cause being shown to the satisfaction of the Court, for its non-production earlier. Its grievance is that the Court precluded it from adducing evidence in support of its defence, which on legal advice, it did not adduce at the time of the hearing of the case because on his own evidence the opposite party was likely to be non-suited as a result of want of proof of service of the notice u/s 80 of the Code of Civil Procedure.

Rule 2 of Order 13 of the Code, therefore, is not quite relevant to the present controversy. The important question is whether in view of the admission by the Court of documentary evidence in proof of the service of notice u/s 80, Civil P. C., after the conclusion of the hearing of the case, the petitioner will be permitted to adduce evidence not only in disproof of the said notice but also on merit's.

5. In my opinion, the additional evidence to be adduced by the petitioner cannot be restricted only to the proof or otherwise of the notice u/s 80, Civil P.C. When the opposite party failed to prove the service of the notice u/s 80, Civil P.C., and there is no dispute that the service of this notice was essential to entitle the opposite party to a judgment in his favour, it was indeed wholly unnecessary for the petitioner to adduce evidence in proof of other defences taken by it. It was contended by Mr. Sinha that when the petitioner knowingly took this risk, he should not be permitted to adduce evidence on merits of the defence.

It will be wholly unreasonable to assume that the petitioner wrongly withheld further evidence. The pertinent question is whether in view of the failure of the opposite party to prove the service of the notice u/s 80, C. P. C., the petitioner should have adduced evidence in proof of its other pleas and in my opinion, the answer is undoubtedly in the negative. When the additional documentary evidence produced by the plaintiff was admitted by the court after the conclusion

of the hearing, the defendant must be afforded an opportunity to adduce evidence not only in rebuttal of the further documentary evidence given by the plaintiff but also such evidence as the defendant would have adduced had the said documents been produced before the conclusion of his case.

There is no rule of law making it obligatory for the defendant to adduce all evidence in its possession even when it was not necessary in view of the nature and character of the evidence adduced by the plaintiff. It is difficult to lay down a hard and fast rule as to the scope and extent of the further evidence that the defendant would be entitled to adduce. Each case must be decided in relation to its particular facts. In this case, it was not necessary for the petitioner to adduce further evidence in support of its defence when the plaintiff had failed to prove the service of the notice u/s 80, C. P. C.

When additional evidence was admitted by the court, the petitioner must now be given an opportunity to adduce evidence in support of its other defences. The order of the court is manifestly wrong and cannot be supported.

6. The petition is accordingly allowed and the order of the learned Additional Subordinate Judge disallowing the petitioner to adduce evidence also in proof of other defences set up by it, is set aside, and the court is directed to dispose of the case according to law. In view of the circumstances of the case, there will be no order for costs.

Rai, J.

7. I agree.