

CS No.56703/16  
M/s Atma Ram Builders Pvt. Ltd. Vs. Ms Embassy  
Restaurant anr.

11.07.2024

Present : Mr. Amit Sethi and Ms. Ekadhana Sethi, Ld.  
Counsels for the plaintiff.  
Mr. Sanjiv Sindhvani, Ld. Senior Advocate  
alongwith Mr. Chetan Sharma, Ld. Counsel for the  
defendants.

The application of the plaintiff under Section 151 CPC and Order 18 Rule 17 r/w Section 151 CPC is taken up for consideration.

By this application, the plaintiff seeks to bring on record certain documents. It is the case of the plaintiff that the rent at which the premises in question was let out to the defendants included house tax which was being paid by the defendants.

It is pleaded in the application that the component of house tax has enhanced multifold.

It is submitted that the subsequent events which transpired in the latter part of years 2020 and 2021 and recently in February and March, 2024 are required to be brought on record since these negate the stand taken by the defendants that they have no liability to pay property tax.

It is averred that the documents which are now sought to be brought on record are an acknowledgment of the liability of the defendants to pay the house tax and resultantly an agreement to the effect that component of tax forms part of the composite rent.

It is pleaded that the stand taken by the defendants of not being liable to pay property tax is false and the documents which are now sought to be brought on record establish that the defendants admit their liability to pay house tax.

It is prayed that under Section 151 CPC, the evidence of the plaintiff be reopened and permission be granted to the plaintiff to prove the documents filed alongwith the application.

In the alternative, it is prayed that under Order 18 Rule 17 of CPC, PW-3 or any other officer from NDMC and/or DW-1 be recalled and questions be put to such witnesses pertaining to the documents.

Reply to the application has been filed.

It is submitted on behalf of the defendants that Order 18 Rule 17 of CPC does not permit a party to lead additional evidence at its own instance. It is argued that the application has been filed only with the intention of delaying the disposal of the suit.

It is pointed out by the Ld. Senior Advocate appearing for the defendants that the record reflects that various attempts have been made by the plaintiff to delay the disposal of the suit by seeking repeated adjournments on frivolous grounds. It is submitted that the documents sought to be brought on record are not relevant.

Arguments have been heard and record has been perused.

For deciding the matter in issue involved in the present case, it needs to be determined if house tax was a component of the agreed rate of rent. The documents which are now sought to

be brought on record by the plaintiff does not establish that at the inception of tenancy or at anytime later on, the defendants agreed that house tax will be a component of rent.

The documents filed alongwith the application are copies of house tax assessment order, notice of demand, legal notice issued by the plaintiff and reply to the notice sent by the defendants, receipts of payments made by the defendants of the house tax, etc. None of these documents establish that the defendants herein have admitted or agreed that the house tax will be a component of rate of rent.

Even if the defendants paid house tax, which is stated to be out of compulsion and to prevent the property from being sealed, it is not an admission on part of the defendants that house tax forms part of the rate of rent.

In case the application is allowed and the case is relegated back to the stage of leading plaintiff's evidence and during pendency of the suit, NDMC issues fresh assessment orders which it is bound by law to do, the plaintiff will keep coming to the Court with successive similar applications for taking on record more documents.

If the documents were indeed relevant, the plaintiff would have, long back, taken steps to bring on record the documents. Half of the documents filed alongwith the application pertain to the years 2020 and 2021. The present application has been filed only in April, 2024. No explanation has been furnished for not coming to the Court earlier for bringing on record the documents of the years 2020 and 2021 which are claimed to be relevant and having a bearing on the decision of the present case.

The plaintiff has itself relied upon the decision of the Hon'ble Supreme Court in the case of K.K. Velusamy Vs. N. Palanisamy CrI. Appeal No.2795-2796 of 2011 dated 30.03.2011 in which it was held that while deciding application under Section 151 and Order 18 Rule 17 of CPC, the Court has to consider whether the evidence ought to be produced would either assist in clarifying the evidence led on the issues or lead to a just and effective adjudication.

For the reasons mentioned hereinabove, the Court is of the opinion that the documents sought to be brought on record would not clarify the evidence led on the issues or will lead to a just and effective adjudication.

This Court is of the opinion that the documents are not relevant while deciding the issues in the present case and the ends of justice do not require such evidence to be led.

The following was held in the case of Ram Ratti Vs. Mange Ram, AIR 2016 SC 1343:

*“11. The respondent filed the application under Rule 17 read with Section 151 of the Code of Civil Procedure invoking the inherent powers of the Court to make orders for the ends of justice or to prevent abuse of the process of the Court. The basic purpose of Rule 17 is to enable the Court to clarify any position or doubt, and the Court may, either suo motu or on the request of any party, recall any witness at any stage in that regard. This power can be exercised at any stage of the suit. No doubt, once the court recalls the witness for the purpose of any such clarification, the Court may permit the parties to assist the Court by examining the witness for*

*the purpose of clarification required or permitted by the Court. The power under Rule 17 cannot be stretched any further. The said power cannot be invoked to fill up omission in the evidence already led by a witness. It cannot also be used for the purpose of filling up a lacuna in the evidence. 'No prejudice is caused to either party' is also not a permissible ground to invoke Rule 17. No doubt, it is a discretionary power of the Court but to be used only sparingly, and in case, the Court decides to invoke the provision, it should also see that the trial is not unnecessarily protracted on that ground."*

The Court has not called upon the parties to clarify any position or doubt, for which further evidence need to be led by the plaintiff.

In the above decision of the Hon'ble Supreme Court in the case of Ram Ratti Vs. Mange Ram, it was held that jurisdiction under Order 18 Rule 17 is to be used only sparingly and the Court has to ensure that the Trial is not unnecessarily protracted due to invocation of this provision.

This Court is of the opinion that if the documents are permitted to be taken on record and the case goes back to the stage of leading plaintiff's evidence, the trial and disposal of the suit will be unnecessarily protracted.

For the above reasons, the application of the plaintiff under

-6-

Section 151 CPC and under Order 18 Rule 17 of CPC is dismissed.

To come up for final arguments on 07.12.2024.

(Shirish Aggarwal)  
District Judge-03  
Patiala House Courts, New Delhi  
11.07.2024