

25.05.2017

Present : Plaintiff – by Sh. Pankaj Chauhan, Advocate – files reply.

Defendant – by Sh. Tarun Kashyap, Advocate.

Heard on the IA u/o 13 rule 3 r/w order 7 rule 14 and section 151 of CPC dated 26.04.2017.

Orders on IA

1. The defendant has filed this IA. The prayer in the IA is to reject the document dated 28.04.2013 filed by the plaintiff.

2. The contention of the defendant is that the plaintiff while amending the suit and by adding certain portions into the plaint had relied on the proposed document dated 28.04.2013. The said document was very much within the power and possession of the plaintiff and he did not rely on the same when the plaint was presented. Considering the provisions of order 7 rule 14 of CPC which mandates upon the plaintiff to describe, denote and speak of any of the documents within their power and possession and further to denote as to under whose custody such document is with, cannot at a later stage bring it on record. It is also urged that without the permission of the court such a document cannot be allowed to be brought on record. Therefore, under the provisions of order 13 rule 3 of CPC, the defendant submits that the proposed document of the plaintiff be rejected.

3. In the reply filed today by the plaintiff to the said IA, it is submitted that the amendment application was allowed. Para 12-A which was allowed to be incorporated into the plaint has a clear mention about the document and the same is produced. It is also submitted by the plaintiff that the said document could not be filed inadvertently and that is why the

amendment was sought. It is submitted that the IA be dismissed with cost.

4. Having heard the Ld. Counsel on either side, the only point that arises for determination in this IA is that “Whether the document spoken to by the plaintiff at Para 12-A in the plaint can be rejected at this stage or not?”

5. The order 7 rule 14 of CPC makes it mandatory on the part of the plaintiff to describe all the documents and produce the same on which reliance is placed by the plaintiff in support of his plaint by denoting such document in a list. It is also mandated on the part of plaintiff to show that such documents which are not produced be specified as to in whose custody power and possession such document is lying with. The production of additional documents as provided under order 13 rule 2 of CPC is no longer on the statute book after the Amendment Act w.e.f. 01.07.2002. Order 13 Rule 1 makes it obligatory on the part of the parties to produce such documents in original. However, certain powers are vested with the court under discretion to reject any document which is irrelevant or otherwise inadmissible at any stage by a speaking order for such rejection under order 13 rule 3.

6. In the instant case the amendment sought by the plaintiff is allowed by an order of the court dated 27.04.2017 by imposing certain terms. The cost imposed thereon is rejected by the defendant on the ground that he would be challenging the order in the higher forum. So far no such order from the higher forum is filed. The Ld. Counsel Sh. Tarun submits that the party is still in the process of filing such a petition to challenge the order allowing the amendment.

7. Consequent to the order allowing the amendment, the plaintiff is now putting forth the document by making a reference of the same at para 12-A. Therefore, it cannot be said that such a document is

now being projected from the blue since all the amendments allowed after hearing both the parties. Amendment would have an effect from the date of filing of the suit. When such a document is described and took a reference in the pleadings, it cannot be said at this stage it as becoming irrelevant for the purposes of the case without the evidence.

8. As regards the contention that the document is now being filed without permission of the court is also un-understandable in so far as the amendment having been allowed. The only contention of the defendant in this IA is that the document be rejected since it is coming up for the first time. The same cannot be accepted since the proposed document is having reference to the amended portion of the plaint. Therefore, no permission of the court is required to produce the document which bears a reference in the pleadings itself.

9. Apart from this the defendant has got an opportunity to file the additional written statement consequent to the amendment which the defendant had not filed till today. The defendant has every opportunity to show that the proposed document is irrelevant or is becoming irrelevant only by filing the additional written statement which has to be considered based on the evidence to be adduced.

10. The suit is filed on 06.08.2013. Almost four years are over and the evidence is yet to be adduced. The suit is being dragged for one or the other reason by filing the IAs when the entire nation and the superior courts expect that all the suits be disposed of within five years following the mandate of Hon'ble SC in ***Hussain vs. Union of India CA No. 509/17 dated 09.03.2017***. It is mandated upon the courts to dispose of the suits within a time frame which object is being frustrated by filing such IAs by the parties. This IA has no merits and has to be dealt with proper costs. Suffice it to say that the IA lacks merits and is misconceived. Hence, the following:

ORDER

The IA stands dismissed with costs of Rs.2500/-. At the request of the defendant put up this matter for payment of cost, additional WS consequent to amendment and to hear on issues by 07.06.2017.

(A.S. Jayachandra)
District & Sessions Judge
Shahdara District, Delhi/25.05.2017