

ORDERS ON I.A.NO.5

This application is filed by the defendant U/o. 11 Rule 21 R/w Sec.151 of CPC., seeking dismissal of the suit of the plaintiff for non-compliance of discovery order.

2. In the memo of facts the advocate for the defendant has stated that on 11/12/2015 this court has passed an order for discovery of documents and directed the plaintiff to produce the documents. Instead of court order, the plaintiff has failed to make discovery order or produced the documents, thereby the plaintiff has failed to comply the discovery order of this court. Hence, he prayed for dismissal of the suit.

3. Heard and perused.

4. The following points arise for my consideration:-

- 1) Whether the suit of the plaintiff is liable to be dismissed for non-compliance of discovery order?
- 2) What order?

5. My answers to the above point No.1 is in the “Negative” and point No.2 as per final order for the following

:- R E A S O N S:-

6. **Point NO.1** :-

The defendant has contended that he has filed I.A.No.3 U/o.11 Rule 12, 14 and 15 R/w 151 of CPC seeking production of all the documents, which are in the possession of the plaintiff concerning to the suit schedule property executed by the defendant.

7. As per the order-sheet, it is clear that suit summon was duly served on the defendant, but he did not appear. Hence, on 16/9/2015 defendant was placed *ex parte* and matter was posted for plaintiff's evidence. Thereafter on 18/11/2015 the defendant appeared through his advocate and filed I.A.No.2 U/o. 9 Rule 7 and I.A.No.3 directing the plaintiff to produce all the documents and I.A.No.4 seeking condonation of delay in filing written

statement. When the matter is pending for filing of objection to I.A.No.2 to 4, the advocate for the defendant advance the matter and submitted that the plaintiff has not produced the documents to prepare written statement. On the same day this court heard on I.A.No.2 and set aside the exparte order and allowed the I.A.No.4 and extended the time to file the written statement till furnishing all the documents by the plaintiff as sought in I.A.No.3. Thereafter on 1/12/2015 I.A.No.3 was allowed and directed the plaintiff to furnish all the documents alleged to be executed by the defendant pertaining to the suit schedule property within next date of hearing. Thereafter matter was adjourned for furnishing the documents by the plaintiff. Thereafter on 29/1/2016 the plaintiff has filed the present application. When the matter was posted for orders on I.A.NO.5 the advocate for the plaintiff has advance the matter and produced the sale agreement executed by the defendant with a memo. On 19/3/2016 the advocate for the defendant submitted that the plaintiff has not complied with order 11 Rule 13 and he has not stated delay in furnishing the documents and he has not furnished the other documents. Thereafter also the advocate for the plaintiff has prayed time for compliance and

on 30/3/2016 the plaintiff has filed his affidavit with a memo. In his affidavit he stated that as per the order passed by this court, he has produced the original agreement to sell executed by the defendant and he has some other documents in connection with the said transaction and he is not ready to produce those documents at this stage and he will produce the same at the time of his evidence.

8. The learned advocate for the defendant has argued that the plaintiff has to produce all the documents, which are in his possession and he has to file an affidavit as per order 11 Rule 13. But in the present case the plaintiff has not produced the documents, which are in his possession and even he has not filed his affidavit for compliance, thereby the plaintiff has failed to comply the discovery order. Hence, this suit is liable to be dismissed for non-compliance of discovery order as per order 11 Rule 21.

9. The learned advocate for the plaintiff has argued that this court has directed only to produce the documents and as per court order, he has produced the sale agreement executed by the defendant and he has some other documents. But he is not in a position to produce the same at this

stage and he will produce the same at the time of evidence. Further he has argued that he has challenged the order of this court.

10. It is the specific contention of the defendant that the plaintiff has not produced all the documents, hence, he is not liable to prepare his written statement and the plaintiff has failed to comply the discovery order passed by this court. On perusal of the entire order-sheet there is no specific order of discovery of documents. Only this court has ordered to produce the documents, which are in the possession of the plaintiff executed by the defendant pertaining to the suit schedule property.

11. In the present case the defendant not yet filed his written statement. Already satisfactory period is expired. He is taking time only on the ground that the plaintiff has not produced the documents, hence he is not able to file the written statement, it is necessary to furnish all the documents to the defendants to file his written statement. The defendant has to file his written statement only based on the plaint averments and any documents produced along with the plaintiff he cannot anticipate the evidence of the plaintiff at the stage of filing the written statement.

12. As per order 7 Rule 9 on admitting the plaint when the court orders for issuance of summons as provided Uo.5 Rule 9 the plaintiff has to furnish plaint copies and on service of the said summons as per order 8 Rule 1 the defendant has to file his written statement within 30 days from the date of service of summons. Order 7 Rule 14 mandates that when the plaintiff sues upon a document or relies upon a document in his possession he has to produce the same along with his plaint. If he is not possessing the document he states in whose possession or power it is. Rule 3 of the order 7 states that a document which ought to be produced in the court by the plaintiff, when the plaint is presented. But it is not produced shall not without the leave of the court be received in evidence.

13. In the present case the plaintiff has not produced any documents along with his plaint. On perusal of the plaint averments, it reveals that the entire suit claim is based on the sale agreement dt: 18/6/2015. It is the case of the plaintiff that the defendant has executed sale agreement on 18/6/2015 and agreed to execute registered sale deed in his favour. When the matter is pending for hearing on the present application the plaintiff has

produced the original sale agreement dt: 18/6/2015 with a memo and he filed his affidavit stating that at this stage he is able to produce the sale agreement and he will produce other documents at the time of evidence.

14. On perusal of the entire order-sheet there is no specific order for discovery of documents. This court has not passed considered order on I.A.No.3. Only it is ordered to furnish the documents to file the written statement. As per order dt: 11/12/15 it is clear that this court allowed the I.A.No.3 and directed the plaintiff to furnish all the documents alleged to be executed by the defendant pertaining to the suit schedule property within next date of hearing. It is ordered for time to file written statement is extended 7 days after furnishing the documents.

15. On perusal of the I.A.No.3, there is no specific document, which are sought by the defendant. He has stated in his application that all the documents which are in the possession of the plaintiff concerning to the suit schedule property alleged to be executed by the defendant. As per the affidavit filed by the plaintiff it can be presume that this stage the plaintiff is having only sale agreement,

which is produced by him pertaining to the suit schedule property. The defendant has to file his written statement based on the plaint averments and documents produced by the plaintiff. The liberty is given to the defendant to object for production of any document at the later stage by the plaintiff. As there is no specific order of discovery and there is no specification about the documents, which are in the possession of the plaintiff and which are all those documents the plaintiff has to produce. Hence, there is no question of violation of order. Hence, I am of the opinion that there is no question of dismissal of the suit on the ground of non-compliance of discovery order. Hence, I answered the point NO.1 in the negative.

16. **Point NO.2** :- In view of the aforesaid reasons, I proceed to pass the following

-: **ORDER** :-

I.A.No.5 filed U/o. 11 Rule 21 R/w
Sec.151 of CPC is dismissed.

Finally for written statement
Call on 12/07/2016.

Civil Judge, Karwar.

The plaintiff has produced un-registered and insufficiently stamped Sale Agreement. The same is impounded.

Office is directed to send the said document to the District Registrar of Stamps, for calculation of Stamp duty and penalty.

Civil Judge, Karwar.

