

Order below Exh.53
in
M.A.C.P. No. 330 of 2016

1. This application has been filed by petitioners for passing an order that the respondent no.2 is not permitted to lead further evidence.

2. It is the contention of the petitioners that on 04.07.2022 this Tribunal framed additional issues at exh.21. Before framing of the additional issues, respondent no.2 had filed its written statement and has led evidence as per his pleadings. As evidence of respondent no.2 was complete and evidence was led on all the issues even on the issues which have been framed later on so now respondent no.2 cannot be permitted to lead further evidence. As per the additional issues 2 A & 2B which have been framed later on 04.07.2022 respondent no.2 had filed application at exh.37 and issued summons to respondent no.1 to examine him as a witness but respondent no.1 remained absent. As regards additional issues 2C & 2D respondent no.2 has examined RW No.2 at exh.38 and RW No.3 at exh.39. So as already evidence has been led respondent no.2 cannot be permitted to led further evidence.

3. Respondent no. 2 has objected this application vide say at exh.54 and admitted that respondent no.2 has examined 2 witnesses at exhs. 38 & 39 respectively and has filed pursis of close its evidence. But as the insurance policy was not exhibited

so respondent no.2 again filed an application to lead further evidence at exh.51 but during pendency of that application additional issues have been framed by the Tribunal. When additional issues have been framed by the Tribunal then both parties have the right to lead further evidence. The petitioners cannot decide the fact that respondent should not be allowed to lead evidence. Respondent no.2 cannot be compelled to not to lead evidence as its right to lead evidence has occurred after framing of the additional issues. Hence respondent no.2 prays that application be rejected.

4. The Ld. Advocate for the petitioners has argued that even if additional issues are framed later on, but evidence is led previously then further evidence cannot be led by respondent no.2. Respondent no.2 had issued summons to respondent no.1 to examine him as a witness but respondent no.1 did not appear as a witness. So again the right cannot be exercised. Evidence cannot be given to fill up the lacuna. In support of this contention he has relied upon the following case laws:

- i) **Smt Katya Bala Dasi & anr. Vs Nilmoni Pakhira & ors. AIR 1987 CALCUTTA 248 and**
- ii) **Sayed Akhtar Vs Abdul Ahad AIR 2003 SUPREME COURT 2985**

5. The Ld. Advocate for the respondent no.2 has argued that additional issues have been framed on 04.07.2022. The defendant cannot decide that evidence is proper or not.

Respondent no. 2 has right to lead evidence after framing of additional issues. Hence the application be rejected. In support of this contention he has relied upon **Iddar & ors. Vs Aabida & anr. AIR 2007 SUPREME COURT 3029.**

6. Perusing the rival contentions it can be seen that, after evidence of both the parties was closed, this Tribunal has framed additional issues at exh.21 on 04.07.2022 and both the parties were directed to lead evidence on additional issues if any, vide order dated 12.07.2022. This application has been filed on the same day. Perusing the rival contentions it can be seen that the contention of the petitioners cannot be accepted while that of respondent no.2 will have to be accepted because, law is well settled that after framing of additional issues both the parties have the right of lead further evidence in support of their contentions if any. The contention of the petitioners that already evidence has been led and further opportunity cannot be given to respondent no.2 to lead evidence cannot be accepted at this stage because, whether the evidence is led to fill up lacuna or further evidence has been given and it is same as the previous one can be decided only after evidence has been led by that party and not at this stage. It cannot be decided now that as already evidence is led further evidence cannot be permitted to be led by any party.

7. In **Katya Vs Nilmoni** the ratio given by the Hon'ble High of Calcutta is that parties to the proceedings went to the

trial, with full knowledge of each other's case and that being the position, the non-framing of such additional issue as claimed, even if the same was necessary, has not caused any prejudice to any of the parties to the proceedings and they had in fact, received all and every opportunity to establish their respective cases. Such being the position, then there is no need to frame issues or to remand the matter for re-trial.

8. The ratio of the cited case is given in an appeal and it has been decided that additional issues need not be framed when all the evidence has been lead to the full knowledge of each other case. But the situation in the present case is different. In the present case additional issues have been framed and it is not the appellate stage but the trial stage. So law is well settled that when additional issues are framed the opportunity should be given to lead evidence to both the parties. So ratio of the cited case is not applicable to the facts of this case.

9. In **Sayed Vs Abdul** the ratio given is that non-framing of specific issue about nuisance, but both the parties were aware of that issue and had led evidence. The Trial Court considering pleadings of parties on that issue as also materials brought on record, decided that issue. Hence inference of the Hon'ble High Court in Second Appeal only on ground that no issue was framed on point of nuisance was improper.

10. The ratio of the cited case is not applicable to the facts of the present case because the ratio is given in an appeal.

The present matter is in the Trial Court and additional issues is already framed. Whether the parties are leading further evidence to fill up the lacuna or not is question of fact which can be decided at the time of final hearing not before both the parties have led evidence. Hence ratio of the cited case is of no help to the petitioners.

11. In Iddar Vs Aabida in a criminal case the Hon'ble Supreme Court has held that whether new evidence is essential or not, must of course depend on the facts of each case, and has to be determined by the presiding Judge. This ratio is not applicable to the facts of the present case because, it is given in criminal case regarding examination of material witness. This ratio has nothing to do regarding evidence to be led after framing of additional issues. So ratio of the cited case is not relevant to the facts of this case.

12. Perusing the rival contentions and the documents on record it can be seen that, as additional issues have been framed after closing of evidence of both the parties so both the parties have right to lead evidence regarding additional issues. One party cannot be prevented from leading evidence on the grounds that already evidence has been led because the fact whether evidence has already been led or not cannot be decided at this stage, it be decided at the time of final hearing only. So the contention of the petitioners cannot be accepted because, law is well settled that after framing of additional issues both the

parties are given right to lead evidence. Hence, the application deserves to be rejected. So, I pass following order:-

ORDER

- 1 Application is rejected.
- 2 Parties to lead evidence if any as per order dated 12.07.2022 passed below exhibit no.1.
- 3 Cost in cause.

Satara.
Date :15.09.2022

(P. P. Abhang)
Member, M.A.C.T., Satara.