

HIGH COURT OF JAMMU & KASHMIR JAMMU.

Civil Revision No.95/2006.

Date of decision 12. 2. 2008

Rajinder Kumar Vs. Vijay Kumar & Others.

Appearing Counsel:

For Petitioner : Mr.V.R.Wazir, Advocate.
For Respondents : Mr.K.S.Chib, Advocate.

The petitioner/defendant has challenged the Order dated 04.05.2006 passed by the 2nd Addl. Munsiff, Jammu, dismissing the application of the petitioner/defendant for permission to file the documents in terms of Order 13 Rule 2 of C.P.C., read with Section 151 C.P.C.

It is necessary to notice the brief facts of the case, which have given birth to this revision petition.

The respondents/plaintiffs filed a suit for prohibitory injunction with the prayer that the petitioner/defendant be restrained from raising any construction on the eastern wall on the grounds taken in the plaint. Precisely the case of the respondents/plaintiffs is that they are the owners and in possession of the shop situated at Dhaunthli Bazar, Jammu, the description of which is given in Para No.1 of the plaint. The defendant/petitioner is bent upon to raise construction of first

floor of his house/shop from eastern side and to use the wall of the plaintiffs' shop in order to lay lantern on it. Along side the suit the plaintiff also filed an application for grant of ad-interim relief which came to be granted by the trial Court and declined by the appellate Court i.e. District Judge, in terms of Order dated 13.11.1999 passed in file No.8/Appeal, titled 'Rajinder Kumar V/S Vijay Kumar & Others'.

The petitioner/defendant filed written statement, wherein he has made mention of a Sale Deed dated 17.03.1964, registered on 18.03.1964 and a Will Deed dated 30.12.1987, as well as Sanction granted by the Municipal Corporation, Jammu. He has also annexed the Photostat copies of the said documents i.e. Sale Deed, Will Deed and Sanction, with the written statement.

Issues came to be framed. The respondents/plaintiffs examined the witnesses and their evidence came to be closed vide Order dated 18.03.2005 and the petitioner/defendant came to be directed to lead evidence.

The petitioner/defendant moved an application allowing him to produce the original documents i.e. Sale Deed, Will Deed and Sanction granted by the Municipal Corporation, Jammu, the details whereof is given in the written statement and the Photostat copies whereof have already annexed with the written statement.

The respondents/plaintiffs have resisted the application on the grounds taken in the petition and ultimately the application came to be rejected in terms of the impugned order.

The core of question involved in this petition is whether the impugned order is revisable.

Learned counsel for the petitioner/defendant made foundation of the arguments on the basis of a judgment of the Apex Court, reported in AIR 2002 SC 100, titled “Madan Lal V/S Shyam Lal”.

While going through the judgment, it appears that in that case the defendant, in the written statement, has not made any reference of the documents sought to be produced. It is profitable and apt to reproduce Para No.3 of the judgment, which reads as under:-

“The facts of the case are that-respondent filed a civil suit for specific performance of agreement to sell, dated 1.8.1992, of agricultural land and residential plot for a consideration of Rs.1,50,000.00. Appellant submitted written statement on 18.1.1996 and denied that he has executed any such agreement to sell in favour of the respondent and that respondent has misused his signatures taken on the blank stamp paper. After the evidence of witnesses of the respondent was recorded, appellant filed applications under Order 13 rule 2 of Civil Procedure Code for production of copy of the award passed by the Land Acquisition Officer regarding the acquisition of one bigha of agricultural land in dispute, electricity bill of his house and copy of the registered sale deed executed by the petitioner on 09.02.1987 in favour of one Nathu Ram pertaining to 900 sq. yds. of land which is also part of the suit property. Those applications filed by the appellant were rejected by the trial Court vide its judgment and order dated 11.1.2001 on the ground that plaintiff has closed his evidence and that defendant has neither submitted his own affidavit nor has

made out a good cause for late production of the said documents. That order was challenged before the High Court of Rajasthan by filing Revision Petition, which was rejected by impugned judgment and order dated 27.2.2001 by holding that there was no reference of the said documents in the written statement and no good cause was shown for its non production at the relevant time. The High Court also arrived at the conclusion that the trial Court has not committed any irregularity or error relating to jurisdiction in refusing to take the documents on record. Hence, revision was dismissed.”

But in the instant case the petitioner/defendant has made reference in the written statement and has also based his claim in terms of the said documents. Not only, he has made reference in the written statement, but has also annexed the Photostat copies of the documents with the written statement, so to me, it is not a case of permission to produce documents, but a case where the permission is sought to take on record the original documents in order to prove the documents. It is worthwhile to mention herein that the petitioner/defendant has yet to lead the evidence and immediately after closing the statement of the respondents/ plaintiffs, the petitioner/defendant filed the application in question.

The judgment (supra) is also not applicable to the instant case in the given facts and circumstances, for the reasons that in the instant case the petitioner/defendant has sworn affidavit in support of the contents of the application, while in the said case the defendant had not filed any affidavit.

Now, question is whether the revision is competent or not?

The revision is competent for the following reasons:-

The trial Court has passed the order which suffers from material irregularities and illegalities. As discussed herein-above, the respondents/plaintiffs were knowing that what was the defence of the petitioners/defendants. The documents sought to be produced were virtually already in the knowledge of the respondents/plaintiffs and the Photostat copies are already on record. The impugned order has virtually rejected the defence of the petitioner/ defendant because the crux of his defence is based on the said documents. Not only the trial Court has acted illegally and with irregularities, but has virtually decided the case by not permitting the petitioner/defendant to place on record and to prove the documents.

The trial Court has lost sight of the provisions of Order XIII Rule 1 and Rule 2 of Civil Procedure Code, applicable to J&K State and Central Code. It is profitable to refer the provision of Order XIII Rule 2 of CPC as contained in J&K State and Order XIII Rule 1 as contained in Central Code.

Order XIII Rule 1 and Rule 2 of Civil Procedure Code, applicable to J&K State, reproduced herein-below:-

“1. Documentary evidence to be produced [at or before the settlement of issues]

- (1) The parties or their pleader shall produce, [at or before the settlement of issues] all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.
- (2) The Court shall receive the documents so produced; Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

2. Effect of non-production of documents

[(1) No documentary evidence in the possession or power of any party which should have been produced 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.

(2) Nothing in sub-rule (1) shall apply to documents-

(a) produced for the cross-examination of the witnesses of the other party, or

(b) handed over to a witness merely to refresh his memory].”

In Central Codes Order XIII Rule 2 stands deleted and accordingly Order XIII Rule 1 amended is reproduced herein-below:-

“[R.1. Original documents to be produced at or before the settlement of issues.- (1) The parties or their pleaders shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement.

(2) The Court shall receive the documents so produced:

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(3) Nothing is sub-rule (1) shall apply to documents-

(a) produced for the cross-examination of the witnesses of the other party; or

(b) handed over to a witness merely to refresh his memory.”

In Central Code the word “in original” is used in Order XIII Rule 1 of CPC, but no such words are figuring in Order XIII Rule 1 or Rule 2 in J&K Code. Thus, the finding returned by the trial Court is not in accordance with the provisions of J&K Code. In Central Code, it is specifically mentioned in Order XIII Rule 1 of CPC that if any party has failed to produce the documents in original before the copy/copies thereof have been filed, he can do so after seeking permission, provided he carves out a sufficient cause, but in the instant case, the mandate or Order XIII Rule 1 and Rule 2 of CPC is that, if a party has failed to place the document/documents with the plaint or written statement, he can apply for production of the document/documents on showing a sufficient cause. Thus the case in hand, as discussed herein-above, is distinguishable for the reasons given herein-above.

This Court in a case titled Punjab & Sindh Bank v. Pardeep Kumar Kappor and Anr reported in 1993 KLJ Page 37, held that the revision is competent.

If the petitioner/defendant would not be allowed to place on record the original documents then he will not be in a position to prove the contents contained in the Photostat copies of the original, which are already on the file and that will cause a serious prejudice to him. He can challenge the illegality of the impugned order by the medium of appeal, If the judgment and decree goes against him, then again the matter is to be remanded, if the appellate Court at that stage would be of the opinion that production of the documents were required for the just decision of the Court. If on this ground the revision would be dismissed that would amount to causing delay and is against the aim and object of speedy justice. The procedural law is meant to further the ends of justice and not to frustrate the same. It is hand made law and its purpose is to achieve goal of justice as early as possible.

The procedural law/rules are not themselves an end but they are meant to achieve the ends of justice. The trial Court/Courts should not succumb to the necessities of law. The procedural wrangles, tangles and mystic may bees have no role to play.

Keeping in view the above discussion, I am of the considered view that the trial Court has passed the impugned order illegally. It suffers from material irregularity and has caused serious prejudice to the petitioner/ defendant. Accordingly the revision petition is allowed, impugned order is

set aside, application of the petitioner/defendant is granted and petitioner/defendant is permitted to place on record the original documents within two weeks from today.