

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAI PUR BENCH, JAI PUR.

O R D E R

S. B. CIVIL WRIT PETITION NO. 3118/2006.

Krishnanand and anr.

Vs.

Civil Judge (Jr. Div.) Gangapur City and ors.

Date of Order: - 31 January 2008.

HON'BLE MR. JUSTICE M. N. BHANDARI

Shri S. K. Gupta for the petitioners.

Shri L. L. Gupta for the respondents-Caveator.

Aggrieved by the order dated 31/3/2006, petitioners have preferred this writ petition.

It has been contended by the learned counsel for the petitioners that they moved an application before the court below under Order 18 Rule 17 read with Section 151 CPC stating that on 16/4/2004 statements of PW1 Bhagwan Sahai were recorded which was then completed on 26/5/2005. On 21/1/2006, statements of PW2 Kailash Chand Sharma were recorded however, defendant-petitioners were not given opportunity to cross examine both the witnesses therefore, those witnesses should be called for their cross examination by the defendant-petitioners.

In reply to the said application, so moved by the petitioners, plaintiff non-petitioners submitted that the application has been moved by the defendant-petitioners only with a view to delay the matter otherwise, they were having an opportunity to cross examine those witnesses. However, when the defendant-petitioners failed to cross-examine those witnesses, the application so moved by the defendant-petitioners was found without merit.

Learned court below dismissed the application so moved by the defendant petitioners after recording the finding that the defendant-petitioners were having opportunity to cross-examine both the witnesses and, therefore, application has been filed without any justified reason. Accordingly, the impugned-order was passed.

Learned counsel for the petitioners submits that the defendant-petitioners were to be given opportunity to cross-examine all the witnesses but they were not provided the said opportunity and in those circumstances their rights could not have been curtailed by the court below by dismissing the application so moved by them.

Per contra, learned counsel appearing for the respondents submitted that the application so moved by the defendant petitioners was only with the intention to delay

the matter otherwise, the statements of PW1 were recorded on 16/4/2004 and were completed on 26/5/2005 as such, a long period was taken for recording of the statements of PW1 and, thereafter, statements of PW2 Kailash Chand Sharma were recorded on 21/1/2006. However, during that period defendant petitioners never came forward to cross examine those witnesses more so when the cross examination of those witnesses was made at the instance of another defendant i.e. defendant No. 4 who had duly cross examined both the witnesses. It has further been urged that the counsel of all the defendants i.e. the defendant-petitioners and defendant No. 4 is one and same therefore, it cannot be even to assume that the defendants-petitioners were not provided opportunity to cross-examine the witnesses as if they were so intend to cross examine the witnesses, counsel being common for all the defendants, necessary cross-examination could have been made even in respect of the defendant-petitioners also. In those circumstances, counsel for non-petitioners submitted that not only the application moved by the petitioners under Order 18 Rule 17 read with Section 151 CPC was devoid of merit but even the writ petition has been preferred only with a view to delay the matter more so

when it is suit for recovery of the arrears of the rent and eviction against the defendants.

I have considered the rival submissions of the parties and perused the impugned-order.

Perusal of the impugned-order reveals that the defendants-petitioners failed to give any satisfactory or cogent reasons as to why and how they could not cross examined two witnesses produced by the plaintiff when such opportunity was available to them and it is not a case where they were denied such opportunity apart from the other reasons given in the impugned-order. As it has been stated by the learned counsel for the respondents that cross examination of those witnesses was otherwise being conducted on behalf of another defendant i.e. defendant No. 4 and counsel for all the defendants is common therefore, for the additional reasons submitted during the course of hearing, it becomes clear that petitioners could not supply any justified reason for supporting the application so moved by them and it has further come on record that two witnesses were otherwise cross examined on behalf of defendant No. 4 hence, the advocate of the defendants being common, defendants were having the opportunity to cross examine two witnesses and now their

failure cannot make them entitle to move an application under Order 18 Rule 17 read with Section 151 CPC.

In view of the discussion made above, I do not find any substance in the writ petition rather there exist no error in the impugned-order passed by the court below.

Thus, writ petition is dismissed with no order as to costs.

(M. N. BHANDARI), J.

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