IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 6490 of 2014 (O&M)
Date of Decision: 05.01.2015

Bridgestone India Pvt. Ltd. ...Petitioner

V/s.

M/s. Brar Motors and another ...Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA.

Present: Mr. M.P. Upadhyay, Advocate for the petitioner.

Mr. K.S. Sidhu, Advocate for the respondents.

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G.S. SANDHAWALIA, J. (Oral).

The present revision petition is directed against the order dated 23.08.2014 passed by the Civil Judge (Junior Division), Chandigarh whereby application under Order 7 Rule 14 CPC filed by the plaintiff-petitioner was dismissed on the ground that the material documents had not been mentioned in the application and the case was at the stage of evidence and every reasonable opportunity had been given to bring forth the documents.

A perusal of the paper book goes on to show that the suit for recovery of ₹1,97,458.85 as on 31.08.2009 with future interest @ 9% per annum with monthly rests due to the plaintiff company on account of delayed payment was filed on 20.10.2009. It is apparent that the case was fixed for leading evidence and several opportunities were granted to company from 03.08.2011 till 13.03.2013. Thereafter, an application for substitution of the authorised representative was filed which remained pending and was allowed on 29.04.2014 and

Surinder Vikram Singh was allowed to represent on behalf of plaintiff/petitioner. On the said date, an application under Order 7 Rule 14 was filed alleging that the suit had been earlier filed by another counsel and material documents had not been appended inadvertently with the plaint. The said documents had been supplied to the counsel which were annexed with the list of documents with the said application submitted. It was further averred that in case the said documents are not annexed, grave injustice will be caused to the plaintiff as they were material documents for proving the case. The evidence of the plaintiff was yet to commence and, therefore, it was submitted that the application was bonafide and no prejudice will be caused to the defendant.

Application was contested on the ground that written statement had already been filed and it amounted to rectifying the lacuna in the case. Evidence had not been produced on account of weakness in the case and it was prayed that the application be dismissed with exemplary costs. The trial Court as noticed had dismissed the application on the ground that the material documents were not annexed.

Counsel for the petitioner has vehemently submitted that the suit for recovery was filed on account of earlier business terms with the defendant/respondent as tyres and tubes were being supplied on credit basis and goods had been despatched by the Chandigarh office. Initially payments had been made but the defendant had defaulted in the payment, on that basis the amount was being claimed

and without the details of the invoices which were not mentioned in the plaint the suit was liable to be dismissed. It is submitted that under Order 7 Rule 14, CPC the documents which are relied upon, are to be duly mentioned in the list and produced in the Court when the plaint is presented but under sub-Rule 3, the Court had the power to permit the documents to be received in evidence at the time of hearing of the suit. It is submitted that in such circumstances, the Court was not justified in rejecting the application filed as it would only help the Court in adjudicating upon the issue and for the mistake the opposite party could be compensated with costs.

Counsel for the respondents, on the other hand, submitted that there was gross negligence on the part of the petitioner company and they had not led evidence and the suit had been pending since 29.10.2009 and the application was filed on 01.04.2014 and in such circumstances, the Court was justified in rejecting the application.

After hearing counsel for the parties, this Court is of the opinion that the order passed by the trial Court is not justified. It is settled principle that rules of procedure are the handmaids of justice and not its mistress and as per Order 7 Rule 14 the documents could be produced with the leave of the Court. The said provision reads as under: -

> "***Production of document on which plaintiff sues or relies***.-
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> *(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall*

> *produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.*
>
> *(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.*
>
> *(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.*
>
> *(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory."*

From the order dated 23.08.2014 it would be clear that evidence from 03.08.2011 to 13.03.2013 was not led. Counsel for the petitioner, though, submitted that the application for substitution of new authorised representative had been filed. But could not deny that the application was only filed on 01.04.2014 and prior to that, the company had been lackadaisical in leading of its evidence in contesting the case.

In the present case, as noticed above, the whole case depends upon the invoices whereby the material has been supplied to the respondent/defendant and the suit for recovery is on the basis of non-payment of the same. In the absence of the said documents on record, it is apparent that the suit would necessarily fail. Thus this Court is of the opinion that in the interest of justice, the opposite party can be well compensated by payment of exemplary costs for the

negligence as the counsel had failed to produce the documents in the list before the trial Court though the same had been supplied by the company. The said details are as under: -

> *"1. Certified True Copy of Certificate of Incorporation.*
> *2. Certified True Copy of the Resolution passed by the board of Directors dated 13.10.2008.*
> *3. Notarized copy of General Power of Attorney dated 24.10.2008.*
> *4. Photo copy of Invoices 8 No.*
> *5. Copy of Letter dated 07.05.2008 & 08.12.2008."*

This Court in AIR 1974 Punjab 287 ***Satnam Singh Sharma Vs. Tarloki Nath Kalia and others*** held that fetters should not be imposed on the Court and if there are adequate grounds to admit a document, the same can be permitted in the interests of justice subject to payment of costs or otherwise. In the present case the grounds have been made out in the application filed which should have been taken into consideration by the trial Court.

As per reasons given above, the judgment of the Apex Court in 2013 (14) SCC 612 ***Kapil Kumar Sharma vs. Lalit Kumar Sharma and another*** can be relied upon wherein the Apex Court even at the stage of cross examination allowed filing of additional documents in an probate case under Order 7 Rule 14, CPC.

The reasons given by the trial Court that the documents had not been appended, are not sustainable since the list of documents had been filed along with application and showed the photocopy of eight invoices which were to be placed on record. As noticed, these would be relevant documents for purpose of deciding the lis in

question inter se the parties and in such circumstances this Court is of the opinion that the order passed by the trial Court is not justified and warrants interference. Accordingly the plaintiffs are permitted to place on record documents list of which has been reproduced above.

The Civil Revision is accordingly allowed and the documents as mentioned above from serial No. 1 to 5 are allowed to be taken on record alongwith the plaint subject to payment of ₹20,000/- as costs to be paid to the defendant.

January 05, 2015 **(G.S. SANDHAWALIA)**
Divyanshi **JUDGE**