Tata Iron and Steel Co. Ltd. Vs. Rajarishi Exports (P) Ltd.

LegalCrystal Citation : legalcrystal.com/526949

Court : Orissa

Decided On : Feb-06-1978

Reported in : 45(1978)CLT421

Judge : S. Acharya, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 115(2) - Order 11, Rules 1 and 11; Code of Civil Procedure (CPC) (Amendment) Act, 1976

Appeal No. : Civil Revn. No. 450 of 1977

Appellant : Tata Iron and Steel Co. Ltd.

Respondent : Rajarishi Exports (P) Ltd.

Advocate for Def. : G. Rath, ;R.K. Rath and ;N.C. Panigrahi, Advs.

Advocate for Pet/Ap. : S.K. Patnaik, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

S. Acharya, J.

1. The petitioner is the sole defendant in Money Suit No. 84 of 1976 pending in the court of the Subordinate Judge, Jajpur. The opposite party's suit is for recovery of Rs. 11,77,090/- with pendente lite and future interest and the costof the suit. The said amount is claimed on the basis of certain allegations made in the plaint based on alleged contracts between the plaintiff and the defendant. In the suit the defendant filed a petition under Order 11, Rule 1 C.P.C. praying for an order of the court directing the plaintiff to answer in writing the interrogatories filed by the defendant. The plaintiff filed its answer to the said interrogatories without waiting for any order of the court to that effect. Thereafter the defendant filed a petition under Order 11, Rule 11, C.P.C. alleging that the answer to the above-mentioned interrogatories furnished by the plaintiff were incomplete, insufficient and/or ambiguous and that the plaintiff had incorporated irrelevant materials in the said answers. On the said allegations the defendant prayed for a direction to the plaintiff to answer the said interrogatories in a more clear, explicit and specific manner, omitting the irrelevant portions therein. On the dismissal of the last-mentioned petition, the defendant has filed this Civil Revision in this Court.

2. Mr. G. Bath, the learned counsel for the opposite party, at the outset urged that the civil revision was not maintainable as by the impugned order the court did not adjudicate any right or obligation of the parties in controversy, and so it could not be said that 'a case had been decided' by that order within the meaning of Section 115, C.P.C, In support of his submission he cited the decision reported in AIR 1970 SC 406 (Baldevdas v. Filmistan Distributors). The aforesaid decision was rendered before the amendment of the Civil Procedure Code in the year 1976. By the said amendment Section 115 of the Code has been amended by inserting a proviso to the main section and adding Sub-section (2) with an explanation of the expression 'any case which has been decided'. It has been conceded by Mr. Rath that the provisions of Section 115 as amended apply to this case. The impugned order having been made in course of the suit would come within the meaning of the said expression as per the said explanation, and so Mr. Rath's objection to the maintainability of the Civil Revision on the above-mentioned ground cannot stand. By adding the aforesaid explanation to Section 115, the scope and ambit of a revision in this Court have been widened, and the limitation put on the expression 'any case which has been decided' in Section 115 by the decision reported in AIR 1970 SC 406 and some other decisions would no longer hold good in view of the amendment of the said section.

3. In this Court Mr. Patnaik, the learned counsel for the petitioner, confined his objection to the answers furnished by the plaintiff to questions Nos. 1 to 8 and 12 and 13. It was contended by Mr. Patnaik that the answer given by the plaintiff to the said questions suffer from various defects as mentioned in the petition under Order 11, Rule 11 filed in the court below by the petitioner, and so that court acted illegally in rejecting the said petition. The court below on a consideration of the questions and answers and on hearing the counsel for both the parties finds that the plaintiff has given elaborate answers to all the questions posed by the defendant and has not omitted to answer any of those questions, nor has it answered the same insufficiently. It, of course finds that while furnishing such answers to the interrogatories the plaintiff has narrated certain facts which may not be strictly relevant for the purpose of the suit with a view to safeguard its own interest.

4. An order under Order 11, Rule 11, C.P.C. can be passed when it is found that any person, on whom interrogatories have been delivered on obtaining leave of the court, omits to answer or answers insufficiently the said interrogatories. In this case it has to be noted that the said interrogatories were not delivered on the plaintiff with the leave of the court. The defendant filed a petition under Order 11, Rules 1, 2 and 4, C.P.C., and the plaintiff without waiting for any order of the court voluntarily submitted its answers to the said questions.

The trial court, which is expected to know the respective cases put forward by the parties and the scope of the suit, has passed the impugned order on hearing the counsel for both the parties. That court has found that the plaintiff has not omitted to answer, nor has it answered insufficiently any of the interrogatories. So no cause for interference under Order 11, Rule 11, C.P.C. is made out on the face of the impugned order. That being so, this Court in its revisional jurisdiction would not interfere with the said finding so long something self-evident or palpable is not shown from the very answers to the questions justifying interference on the grounds mentioned under Order 11, Rule 11 C.P.C. The legislature has not provided an appeal from an order passed under Order 11, Rule 11, C.P.C. On a petition under Section 115 C.P.C. one cannot ask this Court to act as an appellate court and reassess the correctness of the impugned finding on an elaborate and thorough examination of the materials on

record, for that would amount to assume the appellate jurisdiction of the court, not granted by the legislature in a matter of this nature. The revisional power of this Court is circumscribed by the provisions of Section 115 C.P.C. It is well settled that the special and extraordinary revisional jurisdiction of this Court is exercised only to promote justice, and that power should not be exercised unless it is found that the party approaching the court u/s. 115 C.P.C. has no other remedy in law open to him to set aright his grievance, if any. Moreover, as provided in Clause (b) to the proviso to Section 115 (new), this Court shall not exercise its revisional jurisdiction if it is not shown that the impugned order, if allowed to stand, would occasion a failure of justice or cause irreparable injury against whom it was made.

In this case the issues in the suit have not yet been framed. The parties have not filed any document in the case. If the plaintiff has omitted, to answer some questions or has given insufficient answer to the same, the defendant can avail of the opportunity of eliciting answers to such question at the hearing of the suit. Moreover, the defendant can also adduce evidence in support of its case in respect of the matters covered under the questions posed by it. So it cannot be said that the defendant has no other remedy open to it to set aright its grievances, if any, in this respect. So even if it is conceded for the sake of argument that some questions have not been answered or have been answered insufficiently, the petitioner in the ultimate analysis is not going to suffer any irreparable injury in the suit and no failure of justice is occasioned on the rejection of the defendant's petition in the court below. Apart from that consideration, all the 15 questions posed by the defendant have been answered. So it cannot be said that the plaintiff has omitted to answer any of those questions. On hearing the counsel appearing for both the parties and going through the questions and the answers I do not find anything palpable from the face of the answers to justify a comment that the relevant questions have not been sufficiently answered. The court in seisin of the matter, on a consideration of the facts and circumstances of the case, has arrived at the finding that the plaintiff has not omitted to answer, nor has it answered insufficiently any of the said questions. Nothing convincing has been shown to justify a conclusion contrary to the said finding of the court below.

5. The court below has of course found that in answering the questions the plaintiff has stated certain other facts with a view to safeguard its interest in respect of its contracts of the subsequent year, which facts are not relevant for this case. The defendant or the court may ignore those statements for deciding the issues in the suit. A party seeking answers to his interrogatories from the other party cannot direct the latter to answer the questions in a particular manner so as to suit the former's liking or convenience. Answers to questions may be given as desired by the party answering the said questions. Any party to the suit or the court may use any portion thereof as provided in Rule 22 of Order 11, or the court may ultimately reject any portion of the same by declaring the same as irrelevant or may ignore the same for all intents and purposes. There is nothing in Order 11, Rule 11 or in any other provision in the Code which provides for an order of the court at this stage to expunge such statements from such answers.

6. It was urged by Mr. Patnaik that the plaintiff has omitted to answer question No. 12 as it has not furnished the details of the correspondence, nor has it produced the documents referred to in that question. On serving interrogatories on a party under Order 11, Rule 1, C.P.C. one cannot compel that party to make discovery on oath of any document. Provision for discovery on oath or production or inspection of

documents is made under Rules 12 to 21 of Order 11. The application in question was made by the defendant under Order 11, Rules 1, 2 and 4, C.P.C., as expressly mentioned in the application itself. Accordingly, the petitioner cannot make any complaint if discovery of or about documents in any manner was not given or made by the plaintiff on the said application.

Apart from that, till now there is no petition, or any order or direction by the court, to give or make discovery of or about any document in this case. The answers to the interrogatories were furnished voluntarily by the plaintiff. Accordingly, the plaintiff was not obliged to furnish details about any document or produce any document in court on those interrogatories. On the above considerations, the petitioner cannot make any complaint for the non-discovery or non-production of documents by the plaintiff,

7. On the above considerations I do not find any merit in this revision petition and it is accordingly dismissed with costs. Hearing fee Rs. 64/-.