

Before Raj Mohan Singh, J.

SURENDER PAL—*Petitioner*

versus

RAJ SINGH AND ANOTHER—*Respondents*

CR No.1845 of 2013

January 11, 2017

Code of Civil Procedure, 1908—Order 11, Rule 12 and 14—Court obligated to record findings with regard to necessity and relevancy of documents while deciding application under Order 11 Rule 12—Plea of Petitioner seeking production of original documents in possession of Respondents declined—Challenged contending Trial Court has neither recorded any finding regarding necessity of documents for just decision of case nor satisfaction qua possession of documents with Respondents—Held, Trial Court obligated to return findings strictly in compliance of Order 11, Rule 12 and 14 CPC and directed Trial Court to decide application afresh—Petition disposed of.

Held that, the Court has to satisfy itself with regard to necessity and relevancy of the documents, Court has to record satisfaction in terms of proviso to Order 11 Rule 12 CPC that the documents in question are not necessary either for disposing fairly of the suit or for saving costs. Finding has to be recorded in respect of satisfaction and the possession of the documents with the defendant. Para No.7 of the impugned order is reproduced here as under:-

“Perusal of judicial file reveals that this is suit for possession which has been filed by plaintiff under Section 6 of the Specific Relief Act. Plaintiff had concluded the evidence and now the matter is at the stage of evidence of defendant. In the opinion of the Court plaintiff could have summoned the concerned record when the affirmative evidence was being led by the plaintiff and now plaintiff cannot call upon the defendant to produce this record as mentioned in the application unless defendant produce the same of its own in his own evidence. Finding no merit in the application for production of documents, same is ordered to be dismissed with no order as to costs.”

Perusal of the aforesaid concluded part of the order shows that the trial Court has not acted in a judicious manner to answer the

compliance of Order 11 Rules 12 and 14 CPC while deciding the application in question.

(Para 24)

*Further held that, in **Sharvan Kumar Vs. Sumet Kumar Garg, 2002(3)PLR 666**, it was held that the nature of provision itself does not leave any room to refuse such a request. The only exception that could be made is with regard to privilege documents under Sections 122, 123 and 124 of the Indian Evidence Act. This rule is entirely different to Rule 12 of Order 11 CPC which is confined to discovery of documents. Under Rule 14 of Order 11 CPC, all the documents are required to be produced as long as they are found to be relevant. Under Rule 12 of Order 11 CPC, party can be asked to make discovery on oath, of documents which are in his possession or power. If such discovery is found to be unnecessary, then such a prayer can be declined on the ground that it is not necessary for disposing of the suit*

(Para 25)

Further held that, at this stage, though both the parties have tried to argue the case on merits, but this Court is not in a position to appreciate the arguments on merits, lest it may prejudice the case of either sides at a later stage. Impugned order is cryptic inasmuch as that the same does not record satisfaction of the Court that the documents are not necessary, nor any finding has been recorded showing any satisfaction and possession of the documents with the defendants. Plaintiff in the application has given details of the documents. Para No.2(a) of the application revealed number of flats. In the written statement also these flats have been disclosed. The relevancy and necessity of the documents are to be seen by the trial Court before deciding the application. Similarly, the maintenance of register at the security check of the company has to be viewed and decided as per pleadings and defence raised by the parties. The impugned order is totally silent on these aforesaid requirements of law.

(Para 26)

Vikas Bahl, Sr. Advocate with
Priyanka Dalal, Advocate and
Amandeep Singh, Advocate and
Akshay Rawal, Advocate
for the petitioner.

Puneet Bali, Sr. Advocate with
Dhruv Kapur, Advocate

for the respondents.

RAJ MOHAN SINGH, J.

(1) Petitioner has challenged order dated 30.01.2013 passed by Additional Civil Judge (Senior Division), Gurgaon vide which prayer made by the petitioner for issuance of direction to the defendant to produce original documents was declined.

(2) Brief facts of the case are that respondent No.1 is a Director of Ambience Infrastructure Private Limited i.e. respondent No.2. Respondent No.2 is involved in building and property development activities. Petitioner purchased a flat/apartment on second floor in building No.B-1 at Ambience Island, NH-8, Gurgaon from the respondents after paying an amount of Rs.1,35,00,000/- through cheques which were duly encashed by respondent No.2. Respondents also charged an amount of Rs.11,98,000/- towards stamp duty for executing the sale deed in favour of the petitioner. This amount was also paid through cheques. In this way, total amount to the tune of Rs.1,46,98,000/- was paid by the petitioner to the respondents as consideration of the aforesaid flat/apartment.

(3) Petitioner alleged that on 26.11.2005, respondent No.1 handed over the possession of the flat/apartment to the petitioner, but necessary documents were not provided to the petitioner despite repeated requests and reminders. After taking possession, petitioner shifted the household articles in the flat/apartment between 07.01.2006 to 15.01.2006. Petitioner also got an electricity bill in his name for the month of January, 2006 from the Ambience Services Private Limited i.e. the Maintenance Agency created by respondent No.1 for the apartment complex in question.

(4) On 21.01.2006, petitioner along with his family had gone out for some personal work and on their return, they had to face the guards posted by respondent No.1 in the apartment complex. Petitioner was manhandled and was prevented from entering flat/apartment. In a way, petitioner and his family members were forcibly dispossessed by respondent No.1.

(5) Police complaint was also made for taking back the possession. On 23.01.2006, petitioner received a communication from the respondents whereby it was communicated that a cheque for the total amount paid by the petitioner was being refunded to him for want of finalization of the agreement. Petitioner asserted that he had already

signed the agreement in question. With this background, petitioner had to file a Civil Suit under Section 6 of the Specific Relief Act, 1963 against the respondents. Along with the plaint, copies of documents which were in power and possession of the petitioner were also attached.

(6) Suit was contested by the defendants-respondents. After completion of the pleadings, petitioner led his evidence in affirmative. Certain documents were in power and possession of the respondents and those were required to be produced by the defendants in order to help the Court for proper adjudication of the matter.

(7) Petitioner filed an application under Order 11 Rules 12 and 14 read with Section 151 CPC (though the application was captioned only under Section 151 CPC). Following certain documents were sought to be produced:-

“(a) Allotment files including original buyer agreement and applications for allotment of residential flat/residential apartment No.B1-001, B1-101, B1-301, B1-401, B1-501, B1-601, B1-201 and B1-701 in lagoon residential apartment complex, Gurgaon.

(b)Energy Bill No.3165 dated 17.01.2006 in the name of the plaintiff with the date of payment as 31.01.2006 and energy bills and bill book for other flats of the period June 2005 to March, 2006.

(c)Whether sale deeds of all the above flats have been executed? If so, records of the said sale deeds.

(d)Account Books of the company for the year 2005.

(e) Record of the security incharge maintained the security at the gate wherein entry of visitors is made and record of the security incharge who maintained the security of this particular Block B1 in which the Flat No.B1-201 is situated for the period from 01.06.2005 to 31.01.2006.”

(8) The aforesaid documents were sought to be produced for cross examination of respondent No.1.

(9) The application was contested by the respondents on the ground that there was no provision in law whereby petitioner could ask the defendant to bring the documents in his power and possession after conclusion of evidence of the plaintiff. Secondly, it was contested on

the ground that the plaintiff-petitioner wanted to fill lacuna in his case under the garb of the application. The demanded documents were claimed to be not necessary for cross examination of respondent No.1 in any manner, nor the same were necessary for just decision of the case. Plaintiff-petitioner was well within his right to summon the record after calling the witnesses and leading evidence in affirmative. Objections regarding admissibility of the application were also raised. Trial Court vide order dated 30.01.2013 rejected the application. That is how, the present revision petition came to be filed.

(10) I have heard learned counsel for the parties.

(11) Learned counsel for the petitioner contended that the documents sought to be produced were allotment files including original buyer agreement and applications for allotment of residential flats/apartments in Lagoon Residential Apartment Complex, Gurgaon. Further Energy Bill No.3165 dated 17.01.2006 in the name of the plaintiff and energy bills and bill book of other flats for the period June, 2005 to March, 2006 were also sought to be produced. Additionally account books of respondent No.2 for the year 2005 and record of security incharge maintained at main gate showing entry of visitors and record of security of Block B1 from 01.06.2005 to 31.01.2006 were also sought to be produced. Copies of sale deeds if executed in respect of flats were also sought to be produced. Details of flats/apartments as shown in para No.2(a) of the application were given in the written statement.

(12) Learned counsel for the petitioner submitted that the trial Court while declining the prayer has not recorded any finding that the documents in question were not necessary for just decision of the case, nor any finding of satisfaction and possession being with the defendant was recorded by the trial Court while declining the prayer.

(13) Learned counsel referred to Order 11 Rule 12 CPC and contended that any party may, without filing an affidavit, apply to the Court for an order directing any other party to the suit to make discovery on oath of the documents which are in his possession or power. The Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary or not necessary at that time. Provided that discovery shall not be ordered when and so far as the Court shall be of the opinion that it is not necessary either for disposing fairly of the suit or for saving costs. Rule 14 Order 11 of CPC mandated that it shall be lawful for the Court, at any time during pendency of any

suit, to order the production by any party thereto, upon oath of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right and the Court may deal with such documents, when produced, in such manner as shall appear just.

(14) Learned counsel relied upon *Onkar Singh* versus *Ravindra Malhotra*¹ and contended that under Order 11 Rule 14 CPC, there is no scope to dismiss the application except where the case falls under the exception of privilege documents under Sections 122, 123 and 124 of the Indian Evidence Act. Order 11 Rule 14 CPC is confined to production of only those documents which related to any fact in issue or relevant fact. Learned counsel further submitted that documents which are required to be produced have reasonable connectivity with the merits of the case. Since the documents are in the custody of the defendants, therefore, the documents being in possession and power of the defendants can be ordered to be produced under the provision in question.

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(16) On the other hand, learned counsel for the respondents vehemently submitted that the application in question is only under Section 151 CPC and the same does not disclose anything in respect of documents being in possession of the defendants, therefore, no reply is required to be given. Proviso to Order 11 Rule 12 CPC specifically provided that discovery not to be ordered when the Court is of the opinion that the document is not necessary either for disposing or for saving costs. Learned counsel emphasized that no necessity has been pleaded in the application in respect of documents which are sought to be produced. The application is totally vague, therefore, proviso to Order 11 Rule 12 CPC squarely applies to the facts of the case.

(17) Learned counsel relied upon *Punj Star Industries Private Limited* versus *Atna Investment Private Limited*² and

¹ 2014(2) PLR 600

² 2001(5) AD(Delhi) 1029

contended that the plaintiff has to prove its case in affirmative and it is not for the defendants to prove the defence in the negative. No roving inquiry can be ordered under the said provision. Relevancy and connectivity of the documents with the controversy is *sine quo non*.

(18) By referring to the written statement filed by the defendants, learned counsel submitted that the production of documents is wholly unnecessary inasmuch as that the plaintiff is a property broker and he had approached the Sales Department of the Company, M/s Ambience Infrastructure Private Limited (respondent No.2) to purchase a flat worth about Rs.2.5 to 3 crores. In June/July, 2005, all the flats which were available for sale were fully constructed and were being sold on lump-sum basis and not on installment basis. Plaintiff did not have any sufficient funds and desired to make deposits during next 4-5 months to make a total deposit of Rs.2.5 to 3 crores. It was made clear to the plaintiff that in case he deposited the amount within reasonable period, he would be offered a flat for sale at the prevailing rate. Plaintiff made some deposits totaling Rs.1,46,98,000/- from July to November, 2005 and thereafter, stopped making payment. Even after lapse of over 6 months, plaintiff did not deposit full consideration, nor took any steps for finalization of the deal. Respondent-Company informed the plaintiff on 23.01.2006 that the amount deposited by him could not be held by them indefinitely and therefore, returned the same by cheque. Though the plaintiff informed that he did not receive any cheque, but the respondent-Company vide letter dated 02.02.2006 informed that in case the plaintiff did not receive any cheque, then he could collect the said amount either by cheque or by pay order on any working day on execution of a proper receipt. Learned counsel further highlighted that in B-1 Block, the respondents have sold similar flats with same covered area for a total consideration of Rs.2.3 to 3 crores each. The stand has been corroborated by the defendant while appearing as DW1.

(19) Learned counsel also highlighted that apartment buyers agreement and letter of possession filed in the shape of photocopies were signed by the plaintiff himself. No document was signed by the defendant. Plaintiff himself is a property agent and has been dealing with the properties for a number of years. No possession can be handed over without execution of proper receipt of possession.

(20) It has also been submitted that in the criminal proceedings, Superintendent of Police, Gurgaon had also filed a reply refuting all the allegations of the plaintiff and it was concluded that no possession of the flat was given to the plaintiff by the defendants and no articles were

found in the said flat. Maintenance Estate Manager, Sh. Vinod Yadav and Security Incharge opened the lock of the said flat before the Investigating Officer. Plaintiff did not finalize any deal in respect of the flat in B-1 Block. The last available flat was B-201 which was sold by the defendants on 07.03.2006 for a total sale consideration of Rs.2.95 crores to one Mohan Singh. The possession of the said flat was handed over to the vendee after receiving full consideration on 30.03.2006. The issuance of energy bill in favour of the plaintiff was stated to be the act of Electricity Department of the defendants on alleged representation made by the plaintiff that he had purchased the flat and offered to make payment of minimum charges. Unsuspecting electric department under a bona fide impression or on the basis of collusion, issued a bill in the name of the plaintiff. The Flat No.B-201 was kept vacant as unsold till the defendant wrote letter dated 23.01.2006 refunding the amount to the plaintiff.

(21) Learned counsel also submitted that the plaintiff had to say in the application that energy bill is being generated by some third person. The bill in question is only for six units. Said units are normal consumption in a flat during its upkeep, repairs, maintenance and finishing of the apartment. M/s Ambience Infrastructure Private Limited is an independent entity and creation of law incorporated under Companies Act.

(22) At last, learned counsel contended that production of documents in terms of Order 11 Rule 14 CPC has to be ordered by the Court only after satisfying itself about the relevancy, relativity or essentiality of production of such documents. By relying upon *The Tata Iron and Steel Co. Ltd. and others* versus *Prop. Ajit Cotton Ginning Pressing Dall and Steel Rolling Mills*³ learned counsel emphasized that relevancy, relativity and essentiality of production of documents cannot be ascertained without there being a determination of issue with reference to evidence. Such a course cannot be adopted in a routine manner. The discretion must be exercised in a judicial manner. Learned counsel also relied upon *Ms. Monica Bibli Sood* versus *Dr. Karan J. Kumar and others*⁴ and submitted that expediency and relevancy of the document has to be examined by the Court in a judicious manner before resorting to provisions in terms of Order 11 Rule 14 CPC. No roving inquiry for fishing out the evidence can be

³ 2013(1) RCR (Civil) 506

⁴ 2005(2) RCR (Civil) 455

resorted to by the Court.

(23) I have considered the submissions made by learned counsel for the parties.

(24) From the arguments raised by the learned counsel for the parties, I find that before answering the controversy, the Court has to satisfy itself with regard to necessity and relevancy of the documents, Court has to record satisfaction in terms of proviso to Order 11 Rule 12 CPC that the documents in question are not necessary either for disposing fairly of the suit or for saving costs. Finding has to be recorded in respect of satisfaction and the possession of the documents with the defendant. Para No.7 of the impugned order is reproduced hereasunder:-

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Perusal of the aforesaid concluded part of the order shows that the trial Court has not acted in a judicious manner to answer the compliance of Order 11 Rules 12 and 14 CPC while deciding the application in question.

(25) In *Sharvan Kumar* versus *Sumet Kumar Garg*⁵ it was held that the nature of provision itself does not leave any room to refuse such a request. The only exception that could be made is with regard to privilege documents under Sections 122, 123 and 124 of the Indian Evidence Act. This rule is entirely different to Rule 12 of Order 11 CPC which is confined to discovery of documents. Under Rule 14 of Order 11 CPC, all the documents are required to be produced as long as they are found to be relevant. Under Rule 12 of Order 11 CPC, party can be asked to make discovery on oath, of documents which are in his

⁵ 2002(3)PLR666

possession or power. If such discovery is found to be unnecessary, then such a prayer can be declined on the ground that it is not necessary for disposing of the suit.

(26) At this stage, though both the parties have tried to argue the case on merits, but this Court is not in a position to appreciate the arguments on merits, lest it may prejudice the case of either sides at a later stage. Impugned order is cryptic inasmuch as that the same does not record satisfaction of the Court that the documents are not necessary, nor any finding has been recorded showing any satisfaction and possession of the documents with the defendants. Plaintiff in the application has given details of the documents. Para No.2(a) of the application revealed number of flats. In the written statement also these flats have been disclosed. The relevancy and necessity of the documents are to be seen by the trial Court before deciding the application. Similarly, the maintenance of register at the security check of the company has to be viewed and decided as per pleadings and defence raised by the parties. The impugned order is totally silent on these aforesaid requirements of law.

(27) At this stage, without embarking upon the merits of the case, it would be just and proper to direct the trial Court to decide the application afresh in the light of material on record. Trial Court shall decide the application afresh without being influenced by any of the observation made by this Court in preceding paras. The facts have been recorded only on the basis of arguments raised by learned counsel for both the sides. Trial Court shall be obligated to return the findings strictly in compliance of Order 11 Rules 12 and 14 CPC.

(28) In view of aforesaid, this revision petition is disposed of.

Sumati Jund