
(2023) 08 GAU CK 0072

Gauhati High Court

Case No: Civil Petition (IO) No. 252 Of 2022

Varun Beverages
Limited

APPELLANT

Vs

M/S Bakskish
Enterprises And Anr

RESPONDENT

Date of Decision: Aug. 25, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 227
- Code of Civil Procedure, 1908 - Section 30, 151, Order 8 Rule 1A(3), Order 22 Rule 10

Citation: (2023) 08 GAU CK 0072

Hon'ble Judges: Mitali Thakuria, J

Bench: Single Bench

Advocate: B K Jain, S P Roy

Final Decision: Disposed Of

Judgement

1. Heard Mr. B. Jain, learned counsel for the petitioner. Also heard Mr. S. P. Roy, learned counsel for the respondent.

2. This civil revision petition, under Article 227 of the Constitution of India, is directed against the Order dated 06.07.2022, passed by learned Civil

Judge No. 1, Kamrup (M), Guwahati, in Money Suit No. 65/2002, whereby, the Petition No. 2851/2019 praying for granting leave for filing the

documents was partly rejected, which was filed by the present petitioner/defendant under Order VIII Rule 1-A(3) read with Section 151 of the Code

of Civil Procedure.

3. The brief facts of the case is that the petitioner/defendant is a Company registered under Companies Act, 1956, having its registered Office at F-

2/7 Okhla Industrial Area, Phase "I", New Delhi, and the respondent/plaintiff No. 1 is a partnership firm, of which the respondent/plaintiff No. 2 is

the proprietor. The respondent, as a plaintiff, instituted a money suit against the present petitioner/defendant, which was numbered as M.S. No.

65/2002 and pending before the Court of learned Civil Judge, No. 1, Kamrup (M), Guwahati, against M/S North East Pure Drinks Private Ltd., the

original defendant No. 1, which was merged with M/S Varun Beverages (International) Limited in the year 2011, whereas M/S Varun Beverages

(International) Limited was amalgamated with M/S Varun Beverages Limited. The respondents, as plaintiffs, on getting information about the

aforesaid amalgamation and devotion of interest, filed an application under Order 22 Rule 10 of the Code of Civil Procedure for substitution and

accordingly, the name of the present petitioner was substituted in place of the original defendant No. 1, vide order dated 05.05.2018, passed by the

learned Trial Court in M.S. No. 65/2002.

4. After the said substitution, the present petitioner filed a petition on 25.06.2019, which was numbered as Petition No. 2851, under order VIII Rule 1-

A (3) read with Section 151 of the Code of Civil Procedure, for granting leave to file documents so as to receive the same in evidence. After

substitution of the name of the petitioner, it has come to the notice of the petitioner that the document Nos. 1 to 6 (as stated in the petition) were

already filed before the learned Trial Court by the original defendants on 04.10.2007. While filing those documents, the leave was also not obtained by

the original defendants under Order VIII Rule 1-A (3) of the Code of Civil Procedure. The document Nos. 1 to 6 could not be filed earlier since the

same were not traceable and necessary leave also could not be obtained by the original defendant due to inadvertence and bona fide mistake of the

earlier engaged counsel.

5. After the amalgamation of original defendant No. 1 with the present petitioner and due to change of management, it has become necessary to give

fresh authority to the representatives of the present petitioner for doing needful in the present case, including authority to give evidence either oral or

by way of affidavit on behalf of the present petitioner. Hence, it has become necessary to file document Nos. 7 to 15, i.e. authority letters, identity

cards, board resolution dated 12.05.2017 and specific power of attorney dated 15.05.2017 etc. Further it is stated that the document Nos. 7 to 15 have

arisen only due to subsequent event, more particularly, due to substitution of the original defendant No. 1 by the present petitioner under the

circumstances stated above.

6. The document Nos. 13, 14 & 15 in the list are only the certified copies of Form 32, dated 24.06.2000, dated 21.08.2000, & dated 14.11.2000, which

are only the substitute of the document Nos. 3, 4 & 5 as the original or the certified copy could not be filed earlier at the time of filing those document

Nos. 3, 4 & 5, which were already accepted by the Court. More so, after a long enquiry, it has come to the knowledge that the original old records of

Registrar of Companies, North East Region, Shillong, were transferred to the Registrar of Companies, Delhi and Haryana and the petitioner

accordingly tried to get fresh certified copies of the document Nos. 3, 4 & 5 and after much difficulties, the petitioner could obtain the certified copy of

document Nos. 3, 4 & 5, which were to be submitted as document Nos. 13, 14 & 15. But the learned Court below partly granted leave only to file

document Nos. 1 to 6 and rejected the prayer for filing the document Nos. 7 to 15. The learned Court below, while rejecting the prayer for leave,

observed that the plea taken by the petitioner/defendant that the documents were not traceable is not appeared to be a justified ground for allowing the

leave and also observed that the suit is pending at the stage of D.Ws. and if the defendants are allowed to produce those documents at the stage of

defendant's evidence, the opposite parties/plaintiffs will be prejudiced. The learned Court below also held that the plea of substitution of the

present petitioner/defendant on 05.05.2018 is also not tenable in the eye of law and in regards to the document Nos. 13 to 15, it is held that the plea of

the petitioner/defendant is found to be not tenable before the eye of law and accordingly, the prayer for grant of leave to file the document Nos. 7 to

15 were rejected.

7. It is further stated that the learned Court, while passing the impugned order and rejecting the prayer for granting leave to file document Nos. 7 to

15, has acted in exercise of its jurisdiction illegally with material irregularity and hence, the same is liable to be set aside. The learned Civil Judge also

overlooked and ignored that the document Nos. 7 to 15 are very vital documents to disprove the claim of the respondents/ plaintiffs and also to support

the case of the petitioner/defendant that the plaintiffs are not entitled to any relief in the suit and if the leave is not granted, the petitioner/defendant will

be highly prejudiced.

8. Mr. B. Jain, learned counsel for the petitioner, has submitted that the substitution order was passed only in the year 2018 after closure of the

evidence of P.Ws. and hence, the documents, which are to be furnished, are only after the subsequent development in the case. There cannot not be

any ground to reject the prayer for filing of the document Nos. 13, 14 & 15, which are merely the certified copies of the document Nos. 3, 4 & 5 and

the same were already submitted by the earlier defendant No. 1 and those were already accepted by the Court. After the subsequent amalgamation

and the order of substitution, the petitioner had to file the petition seeking leave to file the document Nos. 7 to 15, which are very vital documents,

which includes the authorization letter and power of attorney etc., to adduce evidence on behalf of the company and hence, if leave is not granted to

furnish those documents, the petitioner/defendant will be highly prejudiced.

9. The learned counsel for the petitioner/defendant also relied on the following case laws in support of his submissions:

(i) Monawar Hussain Vs. Manoranjan Das, reported in (2016) 4 GLR 298, and mainly stressed on paragraph No. 5 of the judgment, wherein, this

Court has held that under Section 30 of the Code of Civil Procedure, the Courts are vested with power and responsibility to issue necessary order

from time to time inter alia directing the parties to produce or give evidence in regard to materials which are necessary for arriving at truth.

(ii) Maria Margarida Sequeria Fernandes & ors. Vs. Erasmo Jack De Sequeria, reported in (2012) 5 SCC 370, wherein, the Hon'ble Apex Court

has held that "truth should be the guiding star in entire judicial process and truth alone has to be the foundation of justice. Discovering truth is not

only mandate but obligation and bounden duty of the judges.

(iii) Sugandhi Vs. P. Rajkumar, reported in (2020) 10 SCC 706, wherein, it has been held by the Hon'ble Supreme Court that there is no straight

jacket formula but the discretion conferred upon the Court to grant leave under Order 8 Rule 1A(3) should be exercised judiciously.

(iv) Lavaku Pedda Reddamma Vs. Gottumukkala Venkata Subbamma, reported in 2022 Live Law (S.C) 533, wherein also, it has been held that to

deprive a party to the suit to file documents even if there is some delay will lead to denial of justice " Trial Court should have imposed some costs

rather than to decline the production of the documents itself " Rule of procedure are hand maid of justice.

(v) BGC International Pvt. Ltd. Vs. Shree Mallikarjun Shipping Office, reported in (2016) 161 AIC 426, wherein, the Hon'ble Bombay High Court

has held that provisions relating to powers of the Court to grant leave to produce additional documents fall within province of procedural law

Procedural law is there for rendering assistance to parties as well as Court so that substantial justice is done.

10. Citing those judgments, the learned counsel for the petitioner/defendant has submitted that if the document Nos. 7 to 15 are not allowed to produce

before the Court or brought in evidence, the petitioner/defendant will suffer irreparable loss and injury and all those documents, which are to be

produced, are only after subsequent development and after substitution of the present petitioner. Further it is submitted that the question of prejudice to

the other side does not arise at all as the respondents/plaintiffs side will get the opportunity to cross-examine the witnesses on those documents they

want to rely on. Accordingly, it is submitted that the learned Court below has rejected the prayer for production of document Nos. 7 to 15 without

considering the entire aspects of the case and arbitrarily rejected the same and hence, the order passed by the learned Court below is liable to be set

aside.

11. In this context, Mr. S. P. Roy, learned counsel for the respondent/plaintiff, has submitted that the learned Civil Judge No. 1, Kamrup (M),

Guwahati, has rightly rejected the prayer for production of the document Nos. 7 to 15 with the observation that the defendant made no whisper in their

Written Statement regarding documents which were sought to be produced and only plea taken by the defendant that the documents were not

traceable is not appeared to be justifiable ground for allowing leave to the defendant for production of the documents. Accordingly, there is no need of

any interference of this Court in the order passed by the learned Civil Judge No. 1, Kamrup (M), Guwahati, in Money Suit No. 65/2002. It is further

stated that the change of management had already taken place much before the prayer for production of the documents and it was within the

knowledge of the defendant, but only to delay the case, they filed the petition seeking leave of the Court after closure of the evidence of the P.Ws.

Further it is submitted that the only dispute is for the book of accounts which has already been produced by the parties and the case is of the year

2002, and till now the defendant took many adjournments which already caused delay in disposal of this case and hence, further adjournment or

further production of the documents will cause delay in disposal of this case. The order of amalgamation was within the knowledge of the present

petitioner/defendant, which took place in the year 2011, and in spite of having such knowledge, they did not produce any documents and at the very

belated stage, they came up with a petition for production of additional documents and seeking leave accordingly under Order VIII Rule 1A(3) of the

Code of Civil Procedure. Further it is submitted that there is no mention about the documents even in the amended Written Statement and hence, at

this stage, they cannot seek leave of the Court to file additional documents.

12. In support of his submissions, the learned counsel for the respondents/plaintiffs also relied on a decision of this Court in *Nepal Das & Anr. Vs.*

Adhiti Deori & Ors., reported in 2011 0 Supreme (Gau) 62, and mainly stressed on paragraph Nos. 53 & 54 of the judgment, which reads as under:-

“53. The fallout of the above discussion is that if a plaintiff or defendant does not, while presenting the plaint or the written statement, as

the case may be, produce the documents, on which he sues or bases his claim, as well as the documents, which he relies upon as a piece of

evidence to support his case in the plaint or written statement, as the case may be, he debars himself from producing such a document at the

time of settlement of the issues or call for production of such a document. The provisions, contained as regards settlement of issues, leave no

room for doubt that at any rate, before settlement of issues, all the documents, in original, where originals had not been delivered at the time

of presentation of the plaint or the written statement, must be placed before the Court. It is with the settlement of the issues that the hearing

of a suit commences.

54. It is, in this regard, necessary to take note of the fact that before issues are framed, the documents must come on record and it becomes

the duty of the Court to ensure that in terms of the requirement of Order XII, notice is given by a party to the other side for admission of the

documents, if any. In fact, Order XII Rule 3A empowers the Court to record admission at any stage of the proceeding on its own motion and,

on such admission, even a judgment can be given in terms of Order XII Rule 6. When inspection of documents and records, if any, is over,

documents are brought on record and after documents, if any, are admitted, the stage for framing of issues arrives. Naturally, therefore, the

issues must indicate as to who is the party on whom the burden of proof lies and it is in accordance with the burden of proof that the

evidence has to be recorded.

13. Accordingly, it is submitted by the learned counsel for the respondents/plaintiffs that if the documents are allowed to be produced then it will be

purely abuse of the process of Court and in this context, he also relied on a decision of Hon'ble Supreme Court in Maria Margarida Sequeira

Fernandes & Ors. Vs. Erasmo Jack De Sequeira (Dead) through LRS., reported in (2012) 5 SCC 370, and mainly stressed on paragraph Nos. 81 &

82 of the said judgment.

14. In reply, the learned counsel for the petitioner/defendant has submitted that paragraph Nos. 51, 52, 53, 54 & 59 of the judgment of Nepal Das

(supra), relied by the learned counsel for the respondents/plaintiffs, rather supports the case of the petitioner/defendant. Further he has submitted that

from the orders passed by the learned Court below, it is seen that the respondents/plaintiffs took several adjournments in comparison to the

petitioner/defendant and the case had to be adjourned due to various reasons also. So, it is not only that delay has caused only for the lapses or default

of the petitioner/defendant. Further it is submitted that the amalgamation process may be initiated in the year 2011, but the substitution order was

passed by the Court only in the year 2018 and after the substitution of the present petitioner/defendant, the petition was accordingly filed seeking leave

of the Court to file the additional documents, which are necessary for just and proper adjudication of the matter.

15. After hearing the submissions made by the learned counsels for both sides and also considering the materials available on record, it is seen that the

case is admittedly an old pending one and the case was delayed due to various reasons including the adjournment prayed by both the parties and also

due to other reasonable grounds. It is an admitted fact that the order of substitution was passed after the amalgamation of the company and on the

prayer made by the plaintiff, the order for substitution was passed in the year 2018 and the present petitioner/defendant was substituted in place of the

original defendant. Further it is seen that the document Nos. 1 to 6 were already accepted by the learned Court below without any leave of the Court

and as stated above, the document Nos. 13, 14 & 15 are only the certified copies of document Nos. 3, 4 & 5, which were already accepted by the

Court and hence, I find that there cannot be any bar to accept the certified copies of the documents which were earlier accepted by the Court even in

absence of any leave petition.

16. Coming to the other documents, i.e. the document Nos. 7 to 12, it is seen that these are the documents which the defendant wants to produce, i.e.

authority letters, identity cards, board resolution dated 12.05.2017 and specific power of attorney dated 15.05.2017 etc., and these documents had to

be introduced by the defendant only after the subsequent development of the substitution of the present petitioner/ defendant. The learned Court below

only rejected the prayer for furnishing document Nos. 7 to 12 only on the ground that the plea which is taken by the petitioner/defendant is not

justifiable as there is no mention in the Written Statement regarding those documents and hence, the plea taken by the defendant that the documents

were not traceable is not found justified.

17. But, from the entire facts and circumstances of the case, it is seen that the document No. 1 to 6 were already been admitted by the Court and the

document Nos. 13 to 15 are only the certified copies of the document Nos. 3, 4 & 5. More so, the other documents, i.e. the document Nos. 7 to 12,

are some vital documents which are to be relied by the defendants after the subsequent development of substitution. It is a fact that the petition

seeking leave to produce the documents is submitted after the closure of the plaintiff evidence, but from the discussion made above, it cannot be

denied that the order for substitution was passed only after the closure of the plaintiff evidence and hence, it is not only that the defendant remain

silent about those documents, but the documents have to be relied by the defendant/petitioner for the subsequent development of substitution in this case.

18. So, considering the entire circumstances of this case as well as the view of the Hon'ble Apex Court and also to bring all the truth which is the

guiding star of the entire judicial process, I find that the document Nos. 7 to 15 should be allowed to bring on evidence and the respondents/plaintiffs

will get the opportunity to cross-examine the witnesses of the defendant and thus, no prejudice will be caused to the plaintiffs even if those documents

are brought in the evidence at the time of adducing the D.Ws.

19. In the result, I find sufficient merit in this petition and accordingly the same stands allowed. Consequently, the order passed by the Civil Judge No.

1, Kamrup (M), Guwahati, in Money Suit No. 65/2002, is hereby set aside and the petitioner/defendant is accordingly allowed to bring on evidence

document Nos. 7 to 15 before the learned Court below including the document Nos. 1 to 6 which are already accepted by the Court.

20. With the above observation, the present petition stands disposed of.