

(2014) 05 DEL CK 0040

Delhi High Court

Case No: F.A.O. (OS) 274/2014

Parivar Seva Sanstha

APPELLANT

Vs

Marie Stopes International

RESPONDENT

Date of Decision: May 30, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 43 Rule 1A, Order 7 Rule 14

Citation: (2014) 59 PTC 446

Hon'ble Judges: G. Rohini, C.J; Rajiv Sahai Endlaw, J

Bench: Division Bench

Advocate: Sanjeev Ralli, Mayank Kumar and Awnish Kumar, Advocate for the Appellant; Hemant Singh, Sachin Gupta, Shashi P. Ojha and Pranav Narain, Advocate for the Respondent

Judgement

Rajiv Sahai Endlaw, J.

C.M. No. 9836/2014 (for exemption)

1. Allowed, subject to all just exceptions. The application is disposed of.

FAO(OS) 274/2014 & C.M. No. 9837/2014 (for placing documents on record)

2. The appeal impugns the order dated 13th March, 2014 of the learned Single Judge of this Court exercising ordinary original civil jurisdiction of dismissal of Chamber Appeal being O.A. No. 130/2013 preferred by the appellant against the order dated 3rd August, 2013 of the Joint Registrar of dismissal of application of the appellant under Order VII Rule 14 of the Civil Procedure Code (CPC), 1908 in CS(OS) No. 1691/2003 filed by the appellant/plaintiff.

3. Though the appellant/plaintiff had vide the application aforesaid under Order VII Rule 14 of the CPC sought to file a large number of documents but the counsel for the appellant/plaintiff during the hearing of this appeal, confines the relief only to

the documents collected in the year 2012 by making enquires including under the Right to Information Act, 2005. It is vehemently argued that the said documents were not available to the appellant/plaintiff at any earlier point of time and are vital to the claim of the appellant/plaintiff and to defeat the counter suit of the respondent/defendant and thus should be allowed. Reliance is placed on the judgment of the High Court of [Nanjunda Setty @ N.S. Tallam and Others Vs. Tallam Subbaraya Setty and Sons and Others,](#).

4. We have enquired from the counsel for the appellant/plaintiff, whether not the appellant/plaintiff could have made the enquiries which the appellant/plaintiff made in the year 2012, in the year 2003 also, when the suit was filed or prior thereto or soon after the filing of the suit.

5. The counsel for the appellant/plaintiff agrees but states that the appellant/plaintiff was then not advised to do so.

6. The same shows that the reason urged for the documents for filing of which this appeal is confined, is really no reason at all. The fact remains that the appellant/plaintiff inspite of its own laxity is trying to file documents at a very belated stage.

7. The suit filed by the appellant/plaintiff is already eleven years old. From a reading of the order, it appears that the appellant/plaintiff sought to examine three witnesses in support of its suit and out of which one had already been examined by the time, when the application under Order VII Rule 14 of the CPC was filed and the other two also have since been examined. Allowing the appellant/plaintiff to file documents at this stage would necessarily require giving an opportunity to the respondent/defendant also to file documents as well as an opportunity to the appellant/plaintiff to prove the documents which are permitted to be filed, meaning the trial will get further delayed. When the appellant/plaintiff itself is to blame, we find no reason therefore. The procedure and the stages for each step in the suit have been devised to make decision in the suit systematic and if disregard were to be shown to the procedure and the stages prescribed, the suits will never reach the stage of decision. Though prima facie finding that the documents to which the appeal is now restricted are such which can also be put by the counsel for the appellant/plaintiff to the witnesses of the respondent/defendant in cross-examination, the same was put to the counsel for the appellant/plaintiff but he does not take the cue. As far as the judgment of the Karnataka High Court is concerned, the reliance of the counsel for the appellant/plaintiff on the judgment of the Karnataka High Court to urge that after the amendment of the CPC with effect from the year 2002, the Court is not to see the reasons for delay and is to only be concerned with the relevancy of document if correct, is not acceptable by us. We however do not deem it appropriate to deal at length with the said aspect because according to us, this appeal itself is not maintainable. The order impugned is admittedly not appealable under Order XLIII of the CPC. The powers of this Court

under the Letter Patents and under Section 10 of the High Court Act, 1966 are sought to be invoked. However the order impugned does not qualify as a judgment and cannot be said as an "order of moment" to be appealable. Order XLIII Rule 1A gives an opportunity to challenge such orders in appeal against the final judgment/decreed as well. We therefore do not find any reason to interfere with such an order at this stage and which will result in staying further proceedings in the suit. The appeal is accordingly dismissed.