
(2007) 02 GAU CK 0034

Gauhati High Court

Case No: None

Assam Brook Limited

APPELLANT

Vs

Borgong Catholic Hospital

RESPONDENT

Date of Decision: Feb. 14, 2007

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 13 Rule 4
- Constitution of India, 1950 - Article 227

Citation: (2009) 4 GLR 545 : (2008) 1 GLT 792 : (2007) 2 GLT 459

Hon'ble Judges: H.N. Sharma, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

H.N. Sarma, J.

The challenge made in this revision petition filed under Article 227 of the Constitution of India is an order dated 27.11.2006 passed in Money Suit No. 23 of 2003 by the learned Civil Judge (Sr. Divn.), Karimganj.

2. By the impugned order, the learned trial Judge accepted certain additional documents filed by the plaintiff in the suit, which were, admittedly, not filed at the time of presentation of the suit. The plaintiff/respondent instituted the aforesaid Money Suit, inter alia, praying for a decree for Rs. 13,17,773/- against the defendant on account of medical services rendered to the patients of the defendant on diverse dates, pendente lite interest and for other reliefs. Along with the suit, the plaintiff filed as many as 717 documents, which are the bills allegedly issued on different dates by the plaintiff to the employees of the defendant/petitioner.

3. The basic cause of action, as disclosed by the plaintiff, is at paragraph 6, which reads as follows:

That the plaintiff hospital treated hundreds of patients of Dhullie T.E. and (which included the patients of Dering out division also) thereafter individual bill of each patient so treated and medical service rendered at plaintiff hospital to their entire satisfaction, the plaintiff hospital to their entire satisfaction, the plaintiff hospital sent individual medical treatment bills of each patients to the defendant No. 2 at Dhullie Tea Estate for payment. But the defendants failed to make payment of the following bills of the plaintiff hospital till today and unjustly and wrongfully withholding legitimate money of the plaintiff. Though the plaintiff hospital made series of correspondences to the defendants urging and requesting them to make payments to the outstanding bills, but in vain. That a notice of demand by registered post A/D was served by the plaintiff through Advocate Sri A Goswami of Tezpur on the defendants on 04.03.2003 to make payment of the outstanding dues. Though the said notice was duly served on the defendants, but no payment was made by them. Therefore, the plaintiff hospital has no other alternative but to file the instant suit against the defendants before the Hon"ble Court for recovery of money for medical service rendered to the patients of the defendants on credit, pendente lite interest, future interest from 02.01.2003 which the defendants are liable to pay to plaintiff in law and equity.

4. The defendant/petitioner having contested the suit, the suit was set down for hearing and in the meantime, the affidavit evidence of PW 1 was filed but, PW 1 has not been cross-examined in view of the adjournments granted, as prayed for. At that stage, the plaintiff by filing an application under Order 7, Rule 14(3) and Order 13, Rule 4 of CPC read with Section 151 of CPC submitted a good number of documents, which are stated to be the prescriptions issued by the plaintiff to different employees of the defendant/petitioner praying for acceptance of those documents in the suit. At paragraph 3 of the said application, it is, inter alia, stated that those documents were mislaid and mixed with several bunches of other papers and documents in the plaintiff's Hospital and could not be easily traced out earlier at the time of filing the Plaint and also at the time of filing the affidavit (in-chief) of PW 1 and during extensive search for talks of compromise and as advised by the advocates the said documents could be found out by the plaintiff hospital only recently and handed over the same to its Advocates for the needful. The defendant/petitioner filed two written objections opposing the said prayer.

5. The learned Trial Judge heard on the issues on 27.11.2006 and passed the impugned order allowing the plaintiff to file the documents, as prayed for. The one of the considerations for acceptance of the documents by the learned Trial Judge was that when the suit was posted for cross-examination of PW 1, since 10.03.05, the cross-examination of PW 1 was adjourned considering the mutual petition filed by the parties on several dates as talks of compromise between the parties are going on. It comes out from the record that there were certain talks of compromise between the parties, which necessitated the Court to facilitate for such compromise.

6. Order 7, Rule 14 CPC provides for filing of documents relied on in plaint. Order 7, Rule 14(1) provides that if the plaintiff sues or relies upon a document in his possession or power, he is required to produce or annex such document in the Court when he presents the plaint by delivering a copy thereof along with the plaint. Order 7, Rule 14(3) further provides that if the plaintiff relies on any other documents which ought to have been produced in Court when the plaint was presented by him by delivering a copy thereof the same could be produced at a later stage of the suit with the leave of the Court provided such documents are produced for the cross-examination of the witnesses of the other party and/or handed over to a witness merely to refresh his memory under Order 13, Rule 4.

7. A bare reading of Order 7, Rule 14(1), it is seen that if the plaintiff sues upon a document in his possession or power, he is required to produce such document in Court at the time of presenting the plaint by delivering a copy thereof to be filed with the plaint. The said provision has been slightly relaxed under Order 7, Rule 14(3) to the extent that the plaintiff may be entitled to produce those documents to utilize the same in evidence with the leave of the Court at the time of hearing of the suit. Thus, it is clear that if leave is granted such a document can be produced and/or used at a later stage also and there is no absolute prohibition to the effect that once the plaintiff has not produced such document at the time presentation of the plaint, he is precluded to do so for all time to come.

8. In the instant case, it has been contended by Mr. Goswami, learned senior counsel that since the plaintiff has not produced those documents at the time of presentation of the plaint, he cannot be permitted to produce the same at this stage inasmuch as no foundation has been laid down by the plaintiff in support of his claim. Relying upon a decision of the Apex Court reported in [Shin Satellite Public Co. Ltd. Vs. Jain Studios Limited](#), particularly referring to paragraph 17, Mr. Goswami submits that the provisions of Order 7, Rule 14(3) and Order 13, Rule 4 of CPC being mandatory provisions of law, non-compliance of the same would vitiate the proceeding. There is no dispute with the proposition of law whatever has been laid down in the aforesaid judgment.

9. In the case at hand, it appears that the documents which have been sought to be relied upon by the plaintiff at this stage had been filed along with the application praying for necessary leave of the Court and the Court has granted the leave vide impugned order. In such circumstances, it cannot be said that the mandatory provision of law has been violated by the learned trial Judge in passing the impugned order inasmuch as the basic claim of the plaintiff is non-payment of necessary bills raised by the plaintiff towards treatment of various employees of the defendant/petitioner. That being the basic claim of the plaintiff, as can be found out from paragraph 6 of the plaint, the contention of Mr. Goswami that no foundation has been laid down by the plaintiff has no force inasmuch as such a foundation has already been there in the plaint.

10. The learned Trial Judge, after considering the facts and circumstances of the case, in exercise of his discretionary power vide impugned order the plaintiff has been allowed to produce the documents, as prayed for. Although the affidavit evidence of PW1 was filed on 10.03.2005, PW 1 has not been cross-examined due to the adjournments granted in the suit, as prayed for.

11. In view of the above, I do not find that the learned trial Judge has committed any jurisdictional error in allowing the plaintiff to produce those additional documents in the suit justifying interference at the hands of this Court in exercise of the power of superintendence under Article 227 of the Constitution of India. Consequently, this revision petition shall stand dismissed.

It is, however, made clear that since it is an old suit of 2003, learned trial Judge shall dispose of the suit as expeditiously as possible.