

(2011) 08 MAD CK 0342

Madras High Court

Case No: C.R.P. (PD) No. 1485 of 2011 and M.P. No. 1 of 2011

Nakkheeran Publications

APPELLANT

Vs

Dhyanapeeta Charitable Trust

RESPONDENT

Date of Decision: Aug. 16, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 11 Rule 12, Order 11 Rule 14, Order 11 Rule 15, Order 11 Rule 16, Order 11 Rule 18

Hon'ble Judges: K. Venkataraman, J

Bench: Single Bench

Advocate: P.T. Perumal, for the Appellant; G. Suriyanarayanan, for Bala and Daisy, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Venkataraman, J.

The present civil revision petition is directed against the order of the learned Additional District and Sessions Judge, Fast Track Court No. V, Chennai dated 18.3.2011 made in I.A. No. 85 of 2011 in O.S. No. 11115 of 2010.

2. The Defendants in the said suit are the Petitioners herein and the Plaintiff thereon is the Respondent.

3. The Respondent herein has laid the said suit against the Petitioners for permanent injunction restraining them from publishing any materials, articles or photographs in their magazines, website whatsoever either by direct or indirect reference against the Respondent or any of their trustees or devotees.

4. In the said suit, the Petitioners have taken out an application in I.A. No. 85 of 2011 for a direction to the Respondent herein to permit them for inspection of the documents listed along with the application. The said application came to be

dismissed by the Court below and the present civil revision petition is directed against the said order.

5. In the affidavit filed in support of the said application, the Petitioners have pleaded that the suit was filed by a trust, but, however, the trust deed was not a document in the plaint. The suit is represented by one of the trustees viz., Nithya Sadhananda. While so, one Sri Nithya Atmaprabhanandan @ Mohanraj filed a proof affidavit at the time of trial and Ex.A.1 an authorisation letter was filed while filing the proof affidavit on 27.1.2011. A notice was served to the Respondent counsel under order XI Rule 16 CPC demanding inspection of certain vital documents. However, there is no response from the other side. Hence, an application has been filed seeking a direction to the Respondent herein to permit the Petitioners to inspect the documents listed there under.

6. Counter affidavit has been filed on behalf of the Respondent herein wherein it is stated that relevant documents will be marked before the Court at the time of trial through the witnesses. The Petitioners herein without cross examining P.W.1, in order to delay the proceedings, have filed the present application. Hence, the application filed by the Petitioners is pre-mature and is liable to be dismissed.

7. The Court below dismissed the application preferred by the Petitioners on the following grounds:

(i) In the suit filed by the Respondent, P.W.1 was examined as early as 19.1.2011, but the Petitioners without cross examining P.W.1, have filed the said application.

(ii) The Respondent /Plaintiff has categorically mentioned in the counter affidavit that the documents are going to be marked by examining the other witnesses on its side. While so, the application has been preferred hastily at the stage of cross examination of P.W.1.

8. Learned Counsel appearing for the Petitioners as well as learned Counsel appearing for the Respondent have made their submissions based on the pleadings referred to above.

9. I have carefully considered the submissions made by them and perused the entire records.

10. The Petitioners have filed the said application under Order XI Rule 18 CPC Order XI Rule 15 CPC speaks of inspection of documents referred to in pleadings or affidavits. It would be useful to extract the said provision and the same is extracted here under:

15. Inspection of documents referred to in pleadings or affidavits:-Every party to a suit shall be entitled at or before the settlement of issues to give notice to any other party, in whose pleadings or affidavits reference is made to any document or who has entered any document in any list annexed to his pleadings to produce such

document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a Defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think it.

The said provision envisages that every party to a suit shall be entitled at or before the settlement of issues to give notice to any other party in whose pleadings or affidavits reference is made to any document to produce such document for inspection. Order XI Rule 16 CPC speaks of notice to produce the documents. Order XI Rule 18 CPC speaks for order for inspection, which is usefully extracted here under:

18. Order for inspection:-(1) Where the party served with notice under Rule 15 omits to give such notice of a time for inspection or objects to give inspection or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit. Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

The said rules envisage that after notice under Order XI Rule 15, a party who was served with such notice, has to produce the documents for inspection and the Court may, on the application of the party desiring it, make an order for inspection of such documents. However, if the Court finds that it is not necessary either for disposing fairly of the suit or for saving costs, the Court has got power to reject the request of the party who makes an application. In the case on hand, it is a definite case of the Respondent /Plaintiff that relevant documents will be produced and marked while examining the other witnesses on its side. When such a categorical statement was made in the counter affidavit by the Respondent, the Petitioners should have waited for production of the documents and as rightly pointed out by the Court below, the application preferred by the Petitioners is pre-mature. The Petitioners who have to cross examine P.W.1, have filed the present application perhaps avoiding the cross

examination of P.W.1. The Court below therefore, in my considered opinion, has rightly dismissed the application preferred by the Petitioners, which does not warrant any interference by this Court.

11. Learned Counsel appearing for the Petitioners relied on the decision reported in [Babbar Sewing Machine Company Vs. Trilok Nath Mahajan](#) . That was the case where in spite of the direction issued by the Court below to produce the documents for inspection, documents have not been produced and hence, the defence was struck out. Even then, the Hon"ble Apex Court set aside the said order on the ground that unless otherwise it is established that there is a wilful attempt to disregard the order of the Court, the defence cannot be struck out. In the case on hand, the application preferred by the Petitioners for production of the documents by the Respondent herein for inspection, was rejected and hence, the judgment may not be of any use to the Petitioners.

12.1. Learned Counsel appearing for Respondent relied on the decision reported in AIR 1960 MAD 510 (V 47 C 170) - Bagyalakshmi Ammal and Ors. v. Srinivasa Reddiar. In the said decision, it has been held by this Court that an inspection of document filed by party cannot be bad as a matter of course and further held that the mere fact that certain documents have been produced and filed in a suit by a party does not by itself give the other side a right to inspect the same as a matter of course when the party producing the same objects to their being inspected before the determination of a particular issue or questions. That the documents are relevant for the purposes of the suit is not by itself a sufficient reason for ordering premature inspection. A party cannot be compelled to produce any document or to give inspection of the same for the purpose of facilitating cross examination, or for enabling the opposite party to understand the genuineness or purport of the documents relied upon by the party producing them for proving its case.

12.2. In the decision reported in [J.S. Construction Pvt. Ltd. Vs. Damodar Rout](#) , which was relied on by the learned Counsel appearing for the Respondent, it has been held that the privilege vested in a party to the suit by the provisions under Order 11 Rules 12 and 14 is not intended to enable him to cause a roving enquiry to fish out information which may or may not be relevant for disposal of the suit. No doubt, the party seeking discovery or production of the document need not satisfy the court that the document in question is admissible as evidence in the suit, it would sufficient to show that the contents of the document would throw light on the subject-matter of the suit. These basic requirements should be insisted upon by the court before issuing a direction. A direction for discovery production should not be issued as a matter of course.

13. Considering the overall circumstances and the decision referred to above, I am of the considered view that the order of the Court below does not warrant any interference by this Court, since I do not find any illegality or infirmity in the said order.

14. In fine, the order of the learned Additional District and Sessions Judge, Fast Track Court No. V, Chennai dated 18.3.2011 made in I.A. No. 85 of 2011 in O.S. No. 11115 of 2010 is confirmed and the civil revision petition stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.