

(2001) 02 DEL CK 0155

Delhi High Court

Case No: C.M. 3144 of 2000 and Civil Revision No. 1051 of 2000

Metalex Pipes Ltd.

APPELLANT

Vs

Spark Electrodes Pvt. Ltd. and
Another

RESPONDENT

Date of Decision: Feb. 1, 2001

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 13 Rule 2, Order 7 Rule 14, 151

Citation: (2001) 5 AD 240 : (2001) 90 DLT 482

Hon'ble Judges: S.K. Mahajan, J

Bench: Single Bench

Advocate: Umesh Suri, for the Appellant; J.C. Gupta, for the Respondent

Final Decision: Dismissed

Judgement

S.K. Mahajan, J.

Admit.

1. With the consent of parties the matter has been heard and is being disposed of finally.

2. On 18.9.91 plaintiff filed suit for recovery of Rs. 3,75,000/- on the allegations that the plaintiff had given certain advance to the defendants for the supply of material by the defendants to the plaintiff and since the material supplied by the plaintiff was not according to the specification, the same was rejected by the departments to whom it was supplied by the plaintiff. plaintiff consequently claims refund of the amount paid by way of advance to the defendant. The defendant also filed a suit of recovery of Rs. 3,25,000/- against the petitioner for the balance price of the goods. Both the suits were tried together by the Court of the Additional District Judge. After evidence of parties was concluded, the plaintiff filed an application under Order 13 Rule 2 read with Section 151, CPC to place on record certain documents and to lead

further evidence to prove the said documents. It was stated in the application that documents were in possession of the earlier Counsel and the same were not placed by him on record and the plaintiff came to know of the same only at the time of the closure of the statement of the plaintiff and on enquiry from the earlier Counsel the documents were received from him and were sought to be placed on record. The learned Trial Court has not believed the averments made by the plaintiff in the application that the documents were handed over to the Counsel and he had not filed the same. The Court held that the nature of the documents was such that the same could not have been with the Counsel as they were necessarily required to be placed in its office by the plaintiff. The Court, Therefore, did not believe the averments of the plaintiff and dismissed the application filed under Order 13 Rule 2, CPC. Being aggrieved by this order, the present revision petition has been filed by the petitioner.

3. The only argument advanced by learned Counsel for the petitioner is that the documents were in possession of the Counsel and the plaintiff should not be penalised for an act of negligence of the Counsel in not filing the document. I am not impressed by the arguments of the Counsel for the petitioner. As held by the Trial Court, the suit was filed by the plaintiff on the basis of an alleged quality control certificate received before the filing of the suit after the goods received from the defendant were allegedly tested in the laboratory. It is also based on certain account books which were always in possession of the plaintiff. Under Order 7 Rule 14 of the CPC the plaintiff must place on record documents which are in his possession and power and which are the basis of the suit. Since the suit is based upon these documents, in my opinion, it was necessary for the plaintiff to place the same on record. Under Order 13 Rule 2 it is only on the plaintiff furnishing good cause to the satisfaction of the Court that the Court can permit the documents to be placed on record. The learned Trial Court, in my view, has rightly held that even if the documents were with the Counsel, there was no reason for not filing them till the conclusion of evidence of the parties. When evidence of the plaintiff was being recorded, it must have become aware of the fact that the documents were not on record and even then it did not take steps to have the documents placed on record. The Trial Court has, Therefore, rightly not believed the story put forward by the plaintiff.

4. Since the Trial Court has not agreed with the plaintiff, in my view, this Court will not like to interface with the discretion exercised by the Trial Court. There is no jurisdiction error in the order of the learned Trial Court which may call for interference by this Court. There are no merits in this petition and the same is, accordingly, dismissed.

5. Petition dismissed.