

(2007) 12 J&K CK 0017

Jammu & Kashmir High Court

Case No: None

Subash Chander

APPELLANT

Vs

Shri Mata Vaishno Devi Shrine
Board

RESPONDENT

Date of Decision: Dec. 13, 2007

Acts Referred:

- Limitation Act, 1963 - Section 5

Citation: (2008) 1 JKJ 38

Hon'ble Judges: J.P. Singh, J

Bench: Single Bench

Judgement

J.P. Singh, J.

Subash Chander, plaintiff, has filed this revision petition questioning Learned Additional District Judge, Reasi's Order dated

20th March, 2007, allowing Shri Mata Vaishno Devi Shrine Board, Katni's application seeking production of documents which could not be

inadvertently placed on records before framing of the issues.

2. Mr. Sharma, learned Counsel for the petitioner, submits that 'inadvertence', projected as a ground for non-production of documents before the

framing of issues would not fall within the expression 'good cause' occurring in Order 13 Rule 2 of the Code of Civil Procedure, warranting

permission to the respondent-Shrine Board, to produce the documents at the later stage. He thus questions the impugned order placing reliance on

Smt. Maya Devi v. Sandeep Kharnnotra and Ors. reported as 1995 SLJ 95.

3. Mr. U.K. Jalali, learned Senior Counsel appearing for the Shrine Board, on the other hand, submits that some of the documents were the certified copies of the public records, production whereof could not be objected to under law because authenticity of the originals thereof cannot be doubted. Regarding rest of the documents, learned Counsel urged that one of the documents stood referred in the written statement of the Board and the other was plaintiff's letter in original which he had written to the Additional Chief Executive Officer of the Shrine Board and production of these documents cannot be legitimately objected to by the petitioner-plaintiff who had yet to lead his evidence to support his case and meet the defence of the respondent-Board and that production of these documents was not likely to cause any prejudice to the case of the petitioner.

4. Learned Counsel further submitted that the documents sought to be produced were essential for the just decision of the case and were relevant to decide the controversy which was pending before the trial Court as to whether the plaintiff was a tenant or a licensee of the premises in question.

5. I have considered the submissions of learned Counsel for the parties and gone through the judgment cited by learned Counsel for the petitioner.

6. It is no doubt true that a learned Single Judge of this Court had taken a view that ""inadherence"" urged as the cause for non-production of documents at the time when these were required to be produced, would not furnish ""good cause"" for non-production thereof as contemplated by Order 13 Rule 2 of the Code of Civil Procedure, but at the same time it cannot be lost sight of that another learned Judge of the Court, (the then Lord Chief Justice), while commenting upon the powers of the Court to permit production of documents at a later stage, had advocated a liberal exercise of power in allowing production of documents which were necessary for the just decision of the case.

7. I would refer to the views of two learned Judges of the Court on Order 13 Rule 2 of the Code of Civil Procedure, which read thus:

In Maya Devi's case, it was held as follows:

A crucial requirement that a party has to satisfy for production of a document at a later stage, is to show a 'good cause' for its non-production at

the relevant stage. In other words, the party has not to show a mere 'cause' but something more than that and the cause shown must be 'good'. It cannot be disputed that there is a difference of degree between a 'cause' and 'a good cause'. Any-thing can be advanced as a 'cause' but to make out a 'good cause' implies an additional obligation to show the plausibility of soundness of cause. Whether a party shows such 'good cause'. It is for the court concerned to feel satisfied about it. To make it very clear it is the satisfaction of the trial court, and the trial court alone, that matters and the High Court has no scope to interfere where such satisfaction proceeds on a valid reasoning. It would be a different matter if the satisfaction is assumed perversely, arbitrarily, unreasonably or irrationally.

Viewed thus, a party pleading that he did not produce the document at the relevant stage because of ""inadvertence"" cannot be said to be a 'good cause' within the meaning of Order 13 Rule 2 by any stretch of imagination. Even if it be assumed that the mere use of word ""inadvertence"" can furnish a cause, the type and kind of such ""inadvertence"" requires to be further explained to bring it up to the standard of ""good cause"". Otherwise it would be stretching the word ""inadvertence"" too far to say that its mere use furnishes a 'good cause' in a situation. And if any such reasoning was to be accepted, the word ""inadvertence"" would become a passport for any default needing no further explanation for such default committed by the parties. That certainly is not the intend and spirit of the expression ""good cause"" used in Order 13 Rule 2 C.P.C.

Lord Chief Justice, however, held as follows:

Order 13 Rule 2 invests the trial court with the discretion to receive in evidence any document produced out of time provided the party producing the same gives a satisfactory explanation for its non-production at the time of the first hearing. The discretion so given must be exercised liberally in order to advance the cause of justice and accordingly where a document, whether public or private is above suspicion, it should be allowed to come in evidence if it is necessary far the just decision of the case. The trial court has not considered the matter concerning the letter in this perspective. Accordingly the part of the order dealing with the letter must be set aside and the court must be asked to reconsider the question and

make fresh orders in that behalf.

8. I would like to give my own views on the interpretation of the provisions of Order 13 Rule 2 of the CPC as follows:

The language employed by the draftsman of a processual law may be liberal or stringent, but the object of prescribing such procedure for the

decision of a case by a Court, is necessarily to advance the cause of justice.

9. It is precisely for this reason, that the legal position on the question, is well settled, that procedure is the handmaid, and not the mistress of law

and that the processual statutes like CPC are required to be interpreted in such a fashion that these statutes do not deprive a genuine seeker of

justice, of justice, only because it has remained somewhat indolent in complying with the requirements of the procedural law in placing documents,

necessary for the just decision of the case before the Court at the prescribed stage.

10. The dominant factor which should thus weigh with the Court in refusing or allowing permission to place documents on records should be to see

as to whether or not the documents were relevant for deciding the real issue in controversy between the parties and for just decision of the case. If

the documents sought to be produced, though at a belated stage, are found to be relevant for the just decision of the case, the delay in their

production should not ordinarily come in the way of the Court to allow such production regardless of the cause shown for their non-production.

The procedural provisions, if interpreted, in purely school masterly fashion, may come in the way of delivering real justice.

11. I am, therefore, of the view that strict application of the provisions of Order 13 Rule 2 of the Code of Civil Procedure, without keeping in

mind, the relevancy or otherwise of the documents, necessary for the just decision of the case, may not be correct exposition of law.

12. While dealing with the power of a Court to permit production of documents, Hon'ble Supreme Court of India, in Billa Jagan Mohan Reddy

and Another Vs. Billa Sanjeeva Reddy and Others, , held as follows:

Order 13, Rule 1 provides thus:

1. Documentary evidence to be produced at or before the settlement of issues.-(l)
The parties or their pleaders shall produce, at or before the

settlement of issues, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has

not already been filed in Court, and all documents which the Court has ordered to be produced.

(2) The Court shall receive the documents so produced:

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

13. It is clear from its bare reading that the parties or their counsel shall be required to produce all the documentary evidence in their possession or

power which they intend to rely on to establish their right along with pleadings or before settlement of the issues. The court is enjoined under Sub-

rule (2) to receive such documents provided they are accompanied by an accurate list thereof prepared in the prescribed form. If they are not in

the party's possession or custody, it shall be filed by the party along with an application to condone the delay in filing them. The explanation for

delay is not as rigorous as one filed u/s 5 of the Limitation Act. These documents were not in the possession or custody of the appellants, but they

have obtained certified copies from the Revenue Authorities and sought to be produced. It is undoubted that there is a delay in production of the

said documents. But the trial court had stated that the application was filed at the stage of arguments, seeking to produce those documents and

sought to rely upon the documents. It is settled law that, if the documents are found to be relevant to decide the real issue in the controversy, and

when the court felt that interest of justice requires that the documents may be received, exercising the power under Order 41, Rule 27 CPC the

appellate court would receive the documents and consider their effect thereof. When such is the position, when the documents are sought to be

produced in the trial court, before the arguments are completed, normally they may be received; an opportunity given to prove them and rebuttal if

any and their relevance and effect they may have, be considered in deciding the issues arising in the controversy. Under these circumstances, the

trial court was not justified in refusing to condone the delay and to receive the documents. The High Court also committed the same error in not

considering the effect in this behalf in the right perspective. The orders are accordingly set aside and the delay in filing the documents is condoned.

The trial court is directed to receive the documents, give an opportunity to the parties to prove the documents and if necessary, opportunity to the respondent to rebut the same and then dispose of the reference according to law.

14. Going by the law laid-down by Hon'ble Supreme Court of India in the aforementioned case and the discussion made in the preceding paragraphs, I am of the view that the petitioner cannot take any advantage of the judgment of this Court in Maya Devi's case because the judgment, if I may say so with utmost respect to the Hon'ble Judge of this Court, does not go in line with the law laid-down by Hon'ble Supreme Court of India.

15. Following the law laid-down by Hon'ble Supreme Court of India, I do not find any infirmity in the order of learned Additional District Judge, Reasi, permitting the respondent-Shrine Board to produce certified copies of the documents and two other documents on records which were found relevant to decide the issue as to whether the petitioner was a licensee or a tenant qua the premises in question. As the Board had not produced the documents at the prescribed stage so it was required to be burdened with some costs to compensate the other side. I would, accordingly, while dismissing this revision petition, make the production of documents by the respondent-Board as subject to payment of Rs. 1000/- as costs which the Board shall pay to the petitioner within a period of two months.

Disposed of accordingly.