



2024:JKLHC-JMU:146
Sr. No. 08

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- CM(M) No. 32/2022
CM No. 5643/2022
CM No. 2145/2022

**Daljit Singh (Handicapped) Aged 74 years,
S/o Late Avtar Singh
R/o H. No. 125, New Rehari, Behind Shakuntla, Jammu.**

.....Petitioner(s)

Through: Mr. Vijay Gupta, Advocate

Vs

- 1. Dhanwant Kour,
Wd/o Late Mohinder Singh**
- 2. Parvinder Singh**
- 3. Gurvinder Singh
Both Sons of Late Mohinder Singh**
- 4. Amlok Singh
S/o Late Avtar Singh**

**All R/o Plot No. 51, Now 59
Near Dr. Santosh Khajuria
New Rehari, Jammu.**

..... Respondent(s)

Through: Mr. Kishor Kumar, Advocate

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

**ORDER
06.02.2024**

(Oral)

01. In the instant petition, Supervisory Jurisdiction of this Court enshrined in Article 227 of the Constitution of India is being invoked by the petitioner, seeking setting aside of order dated 06.01.2022 (for short "***the impugned order***") passed by the Court



of Ist Additional District Judge, Jammu (for short "***the Trial Court***") in case titled as "*Daljit Singh Vs Mohinder Singh (deceased) & others*".

02. Facts emerging from the record would reveal that the petitioner herein instituted a suit for partition and injunction against the defendants/respondents herein in respect of the immovable properties detailed out in the said suit. During the pendency of the suit, after the plaintiff/petitioner herein as also the defendants/respondents herein led their respective evidence/s in support of the case set up by them in their respective pleadings, the plaintiff/petitioner herein filed an application on 01.12.2020, seeking leave of the Court to place on record a certified copy of the judgement and decree dated 26.02.2020 passed by 2nd Additional Munsiff, Jammu and a certified copy of the lease-deed pertaining to Plot No. 73 situated at Transport Yard Narwal, Jammu of M/s New Karan bus Service Transport Yard, Jammu on the ground that the said documents are necessary for the disposal of the case and that the said documents came to be obtained by the plaintiff/petitioner herein with great difficulty and allowing the plaintiff/petitioner to place on record the documents in question would be in the interest of justice, equity and fair play. The said application was followed by filing of an additional affidavit by the plaintiff/petitioner herein in support of the application, stating therein that one S. Balbir Singh



S/o S. Thakur Singh, R/o 23, Exchange Road Jammu informed the plaintiff/petitioner herein on 23.11.2020 about the execution of the aforesaid lease-deed whereupon the plaintiff/petitioner herein applied for the certified copy of the same and obtained it on 27.11.2020 and that the plaintiff/petitioner herein was not knowing about the said documents before 23.11.2020.

03. The defendants/respondents herein opposed the aforesaid application by filing objections thereto *inter-alia* on the ground that the documents in question ought to have been produced and placed on record by the plaintiff/petitioner herein on or before the settlement of issues and also that the documents in question do not have any bearing on the case being irrelevant to the controversy.

04. The Trial Court upon considering the application as also the objections filed thereto in terms of the impugned order rejected the same, aggrieved whereof the petitioner has maintained the instant petition.

Heard learned counsel for the parties and perused the record.

05. The law on the subject of the effect of non-production of a document was earlier contained in Order XIII Rule 2 of the Code of Civil Procedure (CPC) which provision, however, came to be omitted



by Act 46 of 1999 w.e.f. 01.07.2002 and prior to its omission, same would read as under:-

“Order XIII Rule 2 - Effect of non-production of documents:-

- (1) No documentary evidence in the possession or power of any party which should have been, but has not been produced in accordance with the requirements of Rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof; and the Court receiving any such evidence shall record the reasons for so doing.
- (2) Nothing in sub-rule (1) shall apply to documents-
 - a. produced for the cross-examination of the witness of the other party, or
 - b. handed over to a witness merely to refresh his memory.”

06. It is significant to note here that while the provisions of the Order XIII Rule 2 supra came to be omitted, as observed above, with effect from 01.07.2002, the provisions of Order VII Rule 14 Sub-rule (3) of Civil Procedure Code simultaneously came to be incorporated/ substituted/added by Act 22 of 2002 with effect from 01.07.2002 itself and the said Sub-rule (3) of Order VII Rule 14 of CPC provided as follows:-

“Rule 14. Production of document on which plaintiff sues or relies:-

- (1)
- (2)



(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4)

Sub-rule (1) of Rule 14 of Order VII enjoins upon the plaintiff to produce at the time of institution of suit all documents on which he sues or relies upon and Sub-rule (2) provides that where a document is not in possession of the plaintiff, he shall have to state in whose possession such document is, whereas, Sub-rule (3) lays down the consequences of failure of the plaintiff to produce such documents and lastly Sub-rule (4) carves out exceptional cases in which the provisions of this Rule would not apply.

Since, Sub-rule (3) of Rule 14 is the relevant provision germane to the controversy in the instant petition, which at the cost of repetition, states that a document which ought to have been produced in the Court by the plaintiff at the time of presentation of a plaint shall not thereafter be received in evidence at the hearing of the suit, but it saves the power of the Court to grant a leave to produce such document at a later stage. A Court, thus has a wide discretion under Sub-rule (3) of Rule 14 of Order VII to allow the



production of documents at a later stage having regard to the facts and circumstances of each case.

07. Thus, it can be said that the failure to produce the documents as required by Rule 14 does not entail either rejection of the plaint or dismissal of the suit, but the only penalty for failure to produce the documents is laid down in Sub-rule (3), which envisages that the plaintiff cannot be allowed to produce such documents without the leave of the Court.

08. Having regard to the aforesaid position of law and reverting back to the case in hand, it is manifest that the plaintiff/petitioner herein sought leave of the Court to produce the documents in question during the course of proceedings of the case, though, admittedly after the closure of his evidence as also the evidence of the defendants/respondents herein, to be more precise before the hearing of final arguments of the parties and pronouncement of the judgment thereon in the matter.

09. A deeper and closer examination of the impugned order would manifestly tend to show that the Trial Court has misdirected itself while rejecting the application of the plaintiff/petitioner herein in terms of the impugned order, having wrongly proceeded to refer to on the omitted/deleted provisions of Order XIII Rule 2 CPC supra instead of the applicable provisions of Order VII Rule 14 CPC supra.



Seemingly, the matter has not received appropriate consideration by the Trial court, thus necessitating the remanding of the case back to the Trial court for re-visiting and re-considering the application afresh, having regard to the provisions of Order VII Rule 14 CPC supra.

10. For the foregoing reasons, the instant petition is **allowed** and consequently the impugned order dated 06.01.2022 is set aside, with a direction to the Trial Court to re-consider the application of the petitioner, as directed above, and to pass appropriate order in accordance with law after hearing the parties.

11. It is made clear that any observation which has been made in respect of the application filed by the plaintiff/petitioner herein in this order shall not be deemed to be an expression of any opinion as to the maintainability of the said application or its merits thereof, but shall be deemed to have been made for the purposes of the disposal of the instant petition.

Disposed of accordingly.

(JAVED IQBAL WANI)
JUDGE

JAMMU
06.02.2024
Muneesh

Whether the order is speaking : **Yes**

Whether the order is reportable : **Yes**