

M/s. National Rice and Dal Mills, Rajpura v. The Food Corporation  
of India (Koshal, J.)

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4. Following *Rajinder Parshad and others v. Shamsher Singh* (7), (supra), I hold that the plaintiffs were at liberty to ignore the sale and the order of eviction which they claimed not to be binding on them and that they could straightaway seek the remedy of injunction on the allegations made in the plaint, so that the essential pre-requisite for the relief of injunction to be regarded as a relief consequential upon the relief of declaration is absent in the present case, and while the relief of declaration claimed by the plaintiffs falls under article 17(iii) of Schedule II of the Court-fees Act, the relief of injunction is covered by section 7(iv)(d) thereof.

I may state here that *Khan Singh v. Gurdev Singh and others* (2), (supra), is wholly inapplicable to the facts of the present case inasmuch as therein the suit was admittedly one asking for a declaratory decree coupled with a consequential relief.

5. It is common ground between the parties that if the suit does not fall under section 7(iv)(c) of the Court-fees Act, it must be taken to have been properly valued for the purposes of court-fee and jurisdiction. In the result, therefore, the petition succeeds and is accepted. The judgments of the two Courts below are set aside, and the trial Court is directed to proceed with the suit after the plaint is represented to it. There will be no order as to costs.

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K.S.K.

REVISIONAL CIVIL

Before A. D. Koshal, J.

M/S. NATIONAL RICE AND DAL MILLS, RAJPURA,—Petitioner.

versus

THE FOOD CORPORATION OF INDIA,—Respondent.

**C. R. No. 204-A of 1970.**

April 22, 1970.

*Code of Civil Procedure (Act V of 1908)—Order 7 Rules 14 and 18—Order 13 Rules 1 and 2—Documentary evidence of the plaintiff—When to be produced in a suit—Document not being the basis of the suit nor constituting supporting evidence of the plaintiff—Whether can be produced at no fixed point of time.*

*Held*, that sub-rule (1) of Rule 14 of Order 7, Code of Civil Procedure applies to documents in the possession or power of a plaintiff upon which he sues that is which forms the basis of a suit. Such documents must be presented to the court along with the plaint. Sub-rule 2 of that rule relates to the plaintiff's supporting documentary evidence that is evidence which lends strength to his claim without being the basis of the suit. The details of such supporting evidence must be entered by the plaintiff in a list to be added or annexed to the plaint. The consequences of non-observance of the provisions of rule 14 are laid down in Sub-Rule (1) of Rule 18 of Order 7. The documents not produced or entered in accordance with Rule 14 shall not be received in evidence at the hearing of the suit except with the leave of the Court. Sub-rule (2) of Rule 18, however, makes an important exception in the case of three types of documents, namely (1) documents produced for cross-examination of the defendant's witnesses; (2) documents produced in answer to any case set up by the defendant; and (3) documents handed to a witness merely to refresh his memory. If a document falls within any of these three categories the provisions of Sub-rule (1) of Rule 18 will not apply, so that even if that document was such as should have been produced in Court along with the plaint or entered in a list annexed to the plaint the bar against receiving it in evidence enacted by Sub-Rule (1) of Rule 18 will not come into play. The documents not covered by Rule 14 of Order 7 and not ordered to be produced by the Court under Order 13 Rule 1(1) are not required to be produced by the plaintiff at any fixed point of time. He may therefore, produce them as and when it suits him. If he chooses to do so, action under Rule 18(1) of Order 7 or Rule 13 cannot be taken against him.

*Petition under section 115 of the Civil Procedure Code for revision of the order of Shri I. M. Malik, Sub-Judge 1st Class, Chandigarh dated 28th January, 1970 accepting the application filed by the plaintiff to the extent of holding that the plaintiff should not be permitted to produce the register in evidence except for the entries therein which are duly signed by the Quality Inspector, the genuineness of which is not disputed even by the defendant.*

PURAN CHAND, ADVOCATE, for the petitioner.

K. K. CHOPRA, ADVOCATE FOR ADVOCATE-GENERAL, PUNJAB, for the

#### JUDGMENT

KOSHAL, J.—1. The petitioners before me are a firm (hereinafter respondent, referred to as the firm) which figures as the plaintiff in a suit pending before Shri I. M. Malik, Subordinate Judge, 1st Class, Chandigarh, whose order dated the 28th January, 1970, rejecting an application

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made by them under the provisions of Rule 2 of Order 13 of the Code of Civil Procedure for permission to produce a register in evidence, is sought by them to be revised.

2. The facts are these. The firm entered into an agreement with the defendant, Food Corporation of India (hereinafter referred to as the Corporation), undertaking to shell paddy on behalf of the latter at certain rates. In pursuance of the agreement the firm shelled in 19,363 bags of paddy for which its charges amounted to Rs. 25,724.52. Out of this sum the Corporation admittedly paid to the firm an amount of Rs. 20,000/- only. On the 1st of November, 1968, the firm instituted the said suit for the recovery of Rs. 8,174.82 against the Corporation on account of shelling charges, cartage, amount due in respect of the purchase of paddy and also for expenses incurred on labour utilised in unloading paddy at the firm's mill. The Corporation admitted that the paddy in question had been shelled for it by the firm as stated in the plaint and that transport and labour charges had also been incurred by the firm in that connection but asserted that the suit was liable to dismissal for the following reasons :—

- (a) The State Government had imposed a "quality cut" in respect of the rice supplied by the firm which was, therefore, to be burdened with an amount of Rs. 6,191.82.
- (b) 10470 gunny bags (once used) had been delivered to the firm along with paddy meant for shelling and the same had not been returned to the Corporation. The price of these gunny bags was at Rs. 20,940/- at the prevailing market rates.
- (c) Rice and rice-husk valued at Rs. 856.35 and Rs. 515.25 respectively were lying with the firm in the Corporation's account.

According to the written statement, it was the Corporation, therefore, that had to recover a sum of Rs. 21,373.63 from the firm to whom nothing was thus due. The Corporation reserved its right to recover the amount last mentioned from the firm in a separate suit.

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In its replication the firm took the stand that its bills could not be subjected to any "quality cuts", that it had received not 10470 but 18618 empty bags (once used) from the Corporation all of which, except 816, had been delivered to the Corporation through its agents against their signatures, that even these 816 bags, which remained with the firm, had been badly damaged on account of heavy rains over which the firm had no control and that no quantities of rice or rice-husk were lying with the firm in the Corporations account.

Out of ten issues, which were framed by the trial Court on the 7th of March, 1969, issue No. 5 ran as under :

"Has the plaintiff withheld empty gunny bags as claimed ?"

On an application made under Rule 5 of Order 14 of the Code of Civil Procedure, the trial Judge deleted this issue and substituted therefor the following two issues on the 23rd of June, 1969:—

"5-A. Have the plaintiffs returned the gunny bags (empty) in question as alleged ?

5-B. Were 816 empty bags kept by the plaintiffs' firm with reasonable care and they were ruined by rains which they could not control ?"

On the 2nd of August, 1969, the firm made an application praying that these issues be decided but the same was dismissed on the 30th of August, 1969, when the case was adjourned for evidence to be produced by the firm on the 29th of October, 1969. On the date last mentioned the deposition of Shri K. K. Gupta, Managing Partner of the firm was recorded by the learned Senior Subordinate Judge, Chandigarh, who was then seized of the case, which was adjourned for further evidence to the 19th of November, 1969. On the 18th of November, 1969, an application under Rule 2 of Order 13 of the Code of Civil Procedure was presented to the Court by the firm praying that it be allowed to produce in evidence a register containing the entries in respect of the gunny bags in question. This application was resisted on behalf of the Corporation on the ground that the said register contained forged entries and that it had not been produced at the first hearing although it was in possession of the firm. Before the application could be decided by the

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learned Senior Subordinate Judge, the case was transferred to Shri I. M. Malik, whose order dismissing the application as stated above is impugned in the proceedings before me. That order was made on the following main grounds :—

“(a) As observed by their Lordships of the Privy Council in *T. S. Murugesam Pillai v. M. D. Gnana Sambandha Pandara Sannadhi and others* (1) and *Rameshwar Singh and another v. Baljit Lal Pathak and others* (2), and by their Lordships of the Supreme Court in *Hiralal and others v. Badkulal and others* (3), it is an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light on the proposition. It was also held in *Behari Lal and others v. Jai Singh and others* (4) by Mahajan, J., that a document not relied on in the list of reliance filed at the time of the filing of the written statement and a document not produced at the earliest stage of the trial should be ruled out of evidence.

(b) The provisions of Rule 18(2) of Order 7 of the Code of Civil Procedure did not apply to the facts of the present case inasmuch as the register in question was not being produced by the firm in answer to a claim set up by the Corporation. *Manbodh Missir v. Bhairo Missir and others* (5) was also inapplicable for the same reason. The register was never placed on the file nor shown to the Court or to the opposite party for inspection. Admittedly, the entries in the register were made by the firm or their Munim and “could be written or manufactured at any time without any let or hinderance.”

3. This petition must succeed as none of the reasons on which the impugned order is based is really available in support thereof.

4. The Privy Council and the Supreme Court authorities cited above have no application at all to the facts of the present case as

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- (1) A.I.R. 1917 P.C. 6.
  - (2) A.I.R. 1929 P.C. 95.
  - (3) A.I.R. 1953 S.C. 225.
  - (4) 1965 P.L.R. 362.
  - (5) A.I.R. 1922 Patna 569.

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the *dicta* therein relate clearly to the complete non-production of documents, which could throw light upon a disputed proposition, by a party possessing them and relying upon the abstract doctrine of onus of proof that it was no part of his duty to produce them unless he was called upon to do so. The case is covered, on the other hand, by the provisions of Rules 1 and 2 of Order 13, read with those of Rules 14 and 18 of Order 7 of the Code of Civil Procedure, which may be quoted for facility of reference—

#### ORDER VII

“Rule 14(1) : Where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

(2) Where he relies on any other documents (whether in his possession or power or not) as evidence support of his claim, he shall enter such documents in a list to be added.

“Rule 18(1) : 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, and which 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.

(2) Nothing in this rule applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory.”

#### ORDER XIII

“Rule 1(1) : The parties or their pleaders shall produce at the first hearing of the suit, 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.

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- (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.

Rule 2. 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."

5. I shall first consider the two Rules reproduced above from Order 7. Sub-Rule (1) of Rule 14 applies to a document in the possession or power of a plaintiff, *upon which he sues*, that is, which forms the basis of his suit. Such a document must be presented to the Court along with the plaint. Sub-Rule (2) of that Rule relates, on the other hand, to the plaintiff's supporting documentary evidence, that is, evidence which lends strength to his claim without being the basis of the suit. The details of such supporting evidence must be entered by the plaintiff in a list to be added or annexed to the plaint. The consequences of non-observance of the provisions of Rule 14 are laid down in Sub-Rule (1) of Rule 18, which states that documents not produced or entered in accordance with the former Rule shall not be received in evidence at the hearing of the suit except with the leave of the Court, but then Sub-Rule (2) of Rule 18 makes an important exception in the case of three types of documents, namely—

- (1) documents produced for cross-examination of the defendant's witnesses ;
- (2) documents produced in answer to any case set up by the defendant ; and
- (3) documents handed to a witness merely to refresh his memory.

The result is that if a document falls within any of these three categories, the provisions of Sub-Rule (1) of Rule 18 will not apply

to it so that even if that document was such as should have been produced in Court along with the plaint or entered in a list annexed to the plaint the bar against receiving it in evidence enacted by Sub-Rule (1) of Rule 18 will not come into play. It goes without saying that if a document is not the basis of the suit nor constitutes evidence supporting the plaintiff's claim as disclosed in the plaint, it will not be covered by Rule 14 at all and the plaintiff would not be guilty of any dereliction of duty if he does not produce it with nor enters it in a list annexed to the plaint. Thus, before a document can attract the bar above-mentioned, it must fulfil two conditions, namely,—

- (a) it must be covered by the provisions of Rule 14; and
- (b) it must not be a document of any of the three types above-mentioned.

6. The scope of Rules 1 and 2 of Order 13 may now be stated. Sub-Rule (1) of Rule 1 applies to two types of documents, that is,—

- (i) documents on which the parties intend to rely, which are in their possession or power and which have not already been filed in the Court; and
- (ii) documents which the Court has ordered to be produced.

In so far as a plaintiff is concerned, documents covered by category (i) are obviously those falling under Rule 14 of Order 7 and with regard to such documents the penalty in Rule 2 would be attracted only if they are not produced in accordance with Rule 1, that is, at the first hearing of the suit. If a document is not covered by Rule 14 of Order 7 and does not fall under category (ii) the plaintiff is not required to produce it at any fixed point of time and he may, therefore, produce it as and when it suits him, and if he chooses to do so action under Rule 2 cannot be taken against him. This was also the view expressed by Dawson Miller, C.J., and Mullick, J., in *Manbodh Missir v. Bhairo Missir and others* (5) (supra), with which I respectfully agree.

7. It is in the light of the above discussion of the various provisions of the Code of Civil Procedure that this petition must be decided. It is quite clear that in so far as the case set up by



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the firm is concerned, the register was neither the basis of the suit nor furnished evidence supporting its claim and was not, therefore, covered by the provisions of Rule 14 of Order 7. Besides, it was clearly a document produced in answer to a case set up by the Corporation, the written statement filed by whom for the first time put forth the question of non-receipt of certain bags, which thereafter formed the subject-matter of the firm's replication. Had not the Corporation raised the plea concerning the bags, the firm would not have been called upon to deal with the matter in its replication or to produce the register. The learned trial Judge was, therefore, clearly wrong in thinking that the register was not a document being produced in answer to a case set up by the Corporation. In this view of the matter, the firm was under no obligation to produce the register earlier than it did or to enter it in a list annexed to the plaint. On the contrary it was at liberty to produce the document according to its own convenience, unless the Court chose to call for it earlier.

8. The firm's petition, therefore, merits acceptance on this ground alone.

9. I may add that the learned Subordinate Judge fell into another error when he remarked that the register had not seen the light of the day till the point of time when the impugned order was made. Reference in this connection may be made to the undated reply presented to the trial Court on behalf of the Corporation to the firm's application dated the 18th of November, 1969, made under Rule 2 of Order 13 of the Code of Civil Procedure. That reply states in paragraph 8—

"The plaintiff's counsel at the time of examining Shri K. K. Gupta tried his best to exhibit the register containing false and fabricated entries showing the return of the gunny bags, brought by the plaintiff while in witness-box but the Court disallowed the same on the objection of the counsel for the defendant. The Court was pleased to observe that the documents in possession of the parties should have been produced in Court before the evidence started and the register in question could not be produced at that late stage."

These assertions leave no room for doubt that the register was produced in Court on the 29th of October, 1969, and that the learned Subordinate Judge suspected its genuineness on wrong premises.

As it is, there is another very good reason for not suspecting the genuineness of the register. All the entries in it, which are 23 in number, appear on a single page and three of them, at serial Nos. 4, 15 and 20, are admitted along with the signatures of the Corporation's Inspector against them. All the other entries are said to bear the signatures of the Corporation's agents. Now if entry No. 20 is genuine, which is not disputed, there would normally be no reason to doubt the correctness of entries Nos. 1 to 19 especially when two of them are also admitted. Entry No. 21 relates to 204 bags and entry No. 23 to 1000 bags while entry No. 22 covers 3 bales of new bags, about which there is no dispute between the parties. The entries subsequent to the last admitted entry, therefore, cover 1204 once-used bags in all while the disputed number of bags is more than 10,000. By these observations I do not at all mean to restrict in any way the freedom of the learned trial Judge to assess the worth of the entries in the register if and when the same are properly proved, but these factors should have weighed with him in exercising his discretion in favour of the firm even if he thought that the firm was not entitled to produce in evidence without the leave of the Court.

10. For the reasons stated, I accept the petition set aside the impugned order and direct that the firm shall be allowed to produce the register and given a proper opportunity by the trial Court to prove its contents. The parties are directed to appear before it on the 22nd of May, 1970 and in the circumstances of the case, are left to bear their own costs.

K. S. K.

APPELLATE CIVIL

Before Mehar Singh, C.J. and B. R. Tuli, J.

AMAR NATH GAUTAM,—Appellant.

versus

STATE etc.,—Respondents.

L.P.A. 331 of 1966.

April 29, 1970.

*The Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—Sections 6(i) and 15—Member of a Panchayat Samiti incurring disqualification under section 6(i) on conviction for an offence—Such conviction—*