

Union Of India (Uoi) vs Firm Vishudh Ghee Vyopar Mandal on 2 April, 1953

Equivalent citations: AIR1953ALL689, AIR 1953 ALLAHABAD 689

JUDGMENT

Agarwala, J.

1. This is an application in revision under Section 115, Civil P. C. and also Article 227 of the Constitution. It arises in the following circumstances :
2. The opposite party, Firm Vishudh Ghee Vyopar Mandal, filed a suit in the Court of the Civil Judge, Agra, for recovery of a sum of Rs. 4,90,423/6/- as the price of ghee supplied to the applicant, the Union of India, for damages for breach of a contract and for refund of the security deposited by it with the Union of India.
3. The suit was resisted by the applicant the Union of India, on the ground that the opposite party had supplied adulterated ghee and the adulteration was brought about by fraud practised by the opposite party on the Union of India and the opposite party was not entitled to the money claimed.
4. It appears that prior to the suit there was some investigation by the Special Police Establishment created under the Delhi Special Police Establishment Act, 1946 (Act 25 of 1946): into the matter. The Special Police took away certain correspondence that had passed between the parties 'inter se' or between them and their agents and certain documents from the possession of the opposite party. In the suit filed by the opposite party an application was made by it, asking the Court to direct the applicant, Union of India, to produce the documents which the Special Police had seized from its possession. That application was made on 31-8-1951. It was stated therein that the Special Police Establishment had taken away most of the documentary evidence upon which the plaintiff could and should rely and they were still in their possession, that with a view to find which particular documents the plaintiff should produce in the case it was necessary to inspect all those documents which were in the possession of the Special Police Establishment, that the Special Police Establishment was not prepared to permit inspection of the documents aforesaid to the plaintiff and that an order of the Court was necessary to secure an inspection of the documents above-mentioned. To this application a reply was given on behalf of the Union of India to the effect that the inspection prayed for by the plaintiff could not be ordered as the documents were in the possession of the Special Police Establishment and not of the Union of India and that the plaintiff could summon the documents by the usual procedure provided for in the Code of Civil Procedure. The position that the Union of India took up at that stage was that the Special Police Establishment was not under its control. The plaintiff, however, again insisted that the Special Police Establishment was under the control of the Union Government and that an order for production of the documents should be

made. At a later stage, however, the plaintiff made an application that the documents in the possession of the Special Police Establishment may be summoned in the ordinary course and that, after inspection, it would tender such documents as its evidence as it considered necessary. Summonses were issued to the Inspector General and the Superintendent of the Special Police Establishment on 17-12-1951, directing them to produce the documents concerned on 2-1-1952. On that date, however, the documents were not produced in Court upon which the plaintiff applied that a commissioner might be appointed to bring the documents before the Court or in the alternative the Court might be pleased to order that, if the papers were not produced as per order of the Court, the defendant would be penalised. It added that the defendant was in default by not having complied with the order. The Court thereupon passed an order directing that such documents be produced in Court within three weeks. In compliance with the order of the Court the Superintendent of the Special Police Establishment sent the papers to Court through one of his officers on or about 20-1-1952. The papers having been filed in Court, the plaintiff inspected them in the usual manner as records in the custody of a Court are inspected but did not tender all the documents inspected by it as its evidence. It wanted to tender some of them only in evidence. Thereupon, the defendant made out a list of other documents out of the documents inspected by the plaintiff and filed it in Court and called upon the plaintiff to give them in evidence under Section 163, Evidence Act. The plaintiff refused to do so on the ground that the said documents had not been summoned from the defendant, but were summoned from a witness and that therefore Section 163, Evidence Act did not apply. The learned Civil Judge considered that as the documents had been produced by a third party and not by the defendant, Section 163, Evidence Act could not apply and the plaintiff could not be compelled to give them as its evidence in the case or to admit the documents filed by the defendant. The Court added that the documents had not been tendered by the defendant with proper lists.

"As soon as they are filed with proper list, the plaintiff shall admit or deny them as they are bound to do."

It is against this order that the defendant has come up in revision to this Court.

5. A preliminary objection to the hearing, of the application has been raised by Mr. Jagdish Sarup on behalf of the plaintiff opposite party. He has argued that the order of the Court below is not a case decided within the meaning of Section 115, Civil P. C. as the case in the Court below is still pending and that no revision lies to this Court. On behalf of the Union of India our attention has been invited to a case of the Calcutta High Court, namely, - 'Dhapi v. Ram Pershad', 14 Cal 768 (A). The facts of that case were, however, different from those of the present case and we do not think that the decision in that case governs the present case. The order of the Court below was passed in a matter which was directly connected with the hearing of the case on the merits. While it cannot be said that an interlocutory order can never amount to a case decided, we think that when the hearing of a case on the merits is pending in the Court below and an interlocutory order is passed in connection therewith which does not decide any right of the parties and does not prevent them from obtaining relief in respect of any part of their claim or from taking any plea in defence, it can hardly be said that any case had been decided by the Court below. We think that the preliminary objection raised by Mr. Jagdish Sarup should prevail. Nor do we think that Article 227 of the Constitution confers on us jurisdiction to interfere in a matter of this kind.

6. Though we are allowing the preliminary objection to prevail and are clearly of the opinion that the order impugned is not re-visable, we think it desirable, in view of the importance of the case, to state that, in our opinion, the Court below fell into an error in thinking that the documents could not be taken in evidence under Section 163, Evidence Act. We shall now proceed to state our reasons that the view taken by the learned Civil Judge in this matter is a mistaken one. The Special Police Establishment was created by Act 25 of 1946. Section 4 of that Act provides that the superintendence of the Delhi Special Police Establishment shall vest in the Central Government. It was, therefore, a department of the Union of India and under its control. As such the documents in the possession of the Superintendent of the Special Police Establishment were also under the control of the Union of India. Indeed, this was the position that the plaintiff opposite-party had adopted all along in the case and at one stage of the case the Court below itself had held to the same effect. All the requirements of Section 163, Evidence Act were fulfilled in the case. Notice to produce the documents had been given by means of an application to the Court. The documents had been produced in compliance with the call of the plaintiff as ordered by the Court and the documents had been inspected by the plaintiff. The plaintiff was, therefore, bound to give them as its evidence when required to do so by the defendant. It was urged by Mr. Jagdish Swarup that the notice to produce mentioned in Section 163 is a private notice without the agency of the Court. He pointed out that the notice to produce as mentioned in Section 163 of the Evidence Act is the one which is men-

tioned in Order 12, Rule 8, Civil P. C. This contention is incorrect. That rule refers to a notice to produce documents "at the time of the hearing" so that if they are not produced, the party calling for them may give secondary evidence of the same. Another kind of notice to produce documents is the one mentioned in Order 11. It is a notice to produce documents 'before' the hearing of the case so that they may be inspected by the party calling for them. Section 163, Evidence Act mentions inspection of the documents of which notice has been given by a party to produce. Clearly notice to produce documents mentioned in Section 163, Evidence Act refers to a notice to produce documents as mentioned in Order 11, Civil P. C. Such a notice may be given by a party privately to the other party concerned and, if the other party does not produce the documents, an order of the Court for the production of the documents for inspection may also be made. The mere fact that the agency which has ordered the production of the documents is the Court is immaterial. Further, it was urged that the documents having been produced by a witness, they could not fall within the category of documents contemplated in Section 163. As we have already pointed out, the documents were summoned by the plaintiff from the Superintendent of the Special Police Establishment after an application to that effect had been made by the plaintiff. As the Superintendent of the Special Police Establishment was an official of the defendant and was under its control, the production of the documents by the Superintendent of the Special Police Establishment was a production by the defendant itself and it was immaterial that a summons at one stage had been issued to him for their production. Even if the documents were assumed to have been produced by a witness and not by the defendant, they were the plaintiff's documents as they were filed in Court at its instance; and the defendant could admit such of them as it liked and thereupon ask the Court to treat them as evidence in the case.

7. A proper list of the documents as required by the rules should have no doubt been furnished by the defendant. It can still do so as directed by the Court and we have no doubt that the Court below-

will act according to law.

8. As, however, the preliminary objection prevails, this application must be dismissed. Accordingly, we dismiss this application in revision; but in the circumstances of the case we make no order as to costs.