REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3427 OF 2020
(Arising out of S.L.P.(C) No.16491 of 2019)

SUGANDHI (dead) by Lrs. & ANR. ... APPELLANT(S)

VERSUS

P. RAJKUMAR
REP. BY HIS POWER AGENT IMAM OLI ... RESPONDENT(S)

O R D E R

1. Leave granted.

2. This appeal is directed against the Order dated 19.02.2019 passed by the High Court of Judicature at Madras, Madurai Bench, in C.R.P.(NPD)(MD)No.2609 of 2018 whereby the High Court has dismissed the revision petition filed by the appellants challenging the refusal to entertain an application under Order 8 Rule 1A(3) of the Code of Civil Procedure, 1908 (for short 'C.P.C.') seeking leave of the court to produce additional documents.

3. The appellants herein are the defendants in the suit, O.S. No.257 of 2014, on the file of the Principal Sub-Judge, Pudukottai, and the respondent is the plaintiff. For the sake of convenience, parties are referred to in their respective positions before the Trial Court. The plaintiff filed the suit for injunction alleging that the defendants are attempting to grab the suit schedule property. When the suit was posted for the evidence of the defendants, they filed an application seeking leave to produce certain documents. It was contended that they had recently traced these documents related to the suit property and that was why they could not produce them along with the written statement. This application was opposed by the plaintiff. The Trial Court by its Order dated 11th October, 2018 dismissed the application. As noticed above, the High Court has confirmed the order of the Trial Court.

4. Mr. R. Anand Padmanabhan, learned counsel appearing for the appellants-defendants, submits that the said documents are necessary for just determination of the case. Due to certain unavoidable circumstances, the same could not be produced by the defendants along with the written statement. It was argued that the courts below have rejected the application on flimsy grounds. He

submits that no prejudice whatsoever would be caused to the plaintiff by production of these documents.

5. On the other hand, Mr. S. Mahendran, learned counsel appearing for the respondent-plaintiff, has supported the impugned orders of the courts below. It is argued that the defendants are not entitled as a matter of right to produce the documents, particularly when the plaintiff has concluded his evidence.

6. We have given our anxious consideration to the contentions of the learned counsel of the parties.

7. Rule 1A of Order 8 of C.P.C. provides the procedure for production of documents by the defendant which is as under:

> "**1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.—**
>
> (1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.
>
> (2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.
>
> (3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.
>
> (4) Nothing in this rule shall apply to document—
> (a) produced for the cross-examination of the plaintiff's witnesses, or

(b) handed over to a witness merely to refresh his memory."

Sub-rule (1) mandates the defendant to produce the documents in his possession before the court and file the same along with his written statement. He must list out the documents which are in his possession or power as well as those which are not. In case the defendant does not file any document or copy thereof along with his written statement, such a document shall not be allowed to be received in evidence on behalf of the defendant at the hearing of the suit. However, this will not apply to a document produced for cross-examination of the plaintiff's witnesses or handed over to a witness merely to refresh his memory. Sub-rule (3) states that a document which is not produced at the time of filing of the written statement, shall not be received in evidence except with the leave of the court. Rule (1) of Order 13 of C.P.C. again makes it mandatory for the parties to produce their original documents before settlement of issues.

8. Sub-rule (3), as quoted above, provides a second opportunity to the defendant to produce the documents which ought to have been produced in the court along with the written statement, with the leave of the court. The discretion conferred upon the court to grant such leave is to be exercised judiciously. While there is no straight jacket

formula, this leave can be granted by the court on a good cause being shown by the defendant.

9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3).

10. Coming to the present case, the defendants have filed an application assigning cogent reasons for not producing the documents along with the written statement. They have stated that these documents were missing and were only traced at a later stage. It cannot be disputed that these documents are necessary for arriving at a just decision in the suit. We are of the view that the courts below ought to have granted leave to produce these documents.

11. Therefore, for the foregoing reasons, the appeal succeeds and it is accordingly allowed. The orders impugned herein are set aside. The application (I.A. No.551 of 2018 in O.S. NO.257 of 2014) filed by the appellants-defendants before the Principal Sub-Judge, Pudukottai, is accordingly allowed. Parties to bear their own costs.

.....J.
(S. ABDUL NAZEER)

.....J.
(SANJIV KHANNA)

New Delhi;
October 13, 2020.

ITEM NO.27 Court 10 (Video Conferencing) SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 16491/2019

(Arising out of impugned final judgment and order dated 19-02-2019 in CRP(NPD)(MD) No. 2609/2018 passed by the High Court Of Judicature At Madras At Madurai)

SUGANDHI (DEAD)by Lrs. & ANR. Petitioner(s)

VERSUS

P. RAJKUMAR REP. BY POWER AGENT IMAM OLI Respondent(s)

IA No. 102881/2019 - EXEMPTION FROM FILING O.T.)

Date : 13-10-2020 This matter was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE S. ABDUL NAZEER
HON'BLE MR. JUSTICE SANJIV KHANNA

For Petitioner(s) Mr. Anand Padmanabhan, Adv.
Mr. Shashi Bhushan Kumar, AOR

For Respondent(s) Mr. S. Mahendran, AOR

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.
Substitution allowed.
Leave granted.
The Appeal is allowed in terms of the Reportable Signed Order.
All pending applications are disposed of.

(NEELAM GULATI) **(KAMLESH RAWAT)**
ASTT. REGISTRAR-cum-PS **COURT MASTER (NSH)**

(Reportable Signed order is placed on the file)