REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1787 OF 2013
(Arising out of S.L.P. (C) No.35268 of 2011)

M/s Bagai Construction Thr.
Its Proprietor Mr. Lalit Bagai .... Appellant(s)

Versus

M/s Gupta Building Material Store .... Respondent(s)

J U D G M E N T

P. Sathasivam, J.

1) Leave granted.

2) This appeal is directed against the order dated 23.08.2011 passed by the High Court of Delhi at New Delhi in C.M.(M) No. 707 of 2010 (Civil Revision No. 707 of 2010) whereby the learned single Judge of the High Court allowed the revision filed by the respondent herein and set aside the order dated 25.02.2010 of the Additional District Judge, Delhi.

3) **Brief facts:**

(a) The appellant is a proprietorship concern dealing in interior decoration and construction work and Mr. Lalit Bagai is the sole proprietor of the said concern. The respondent is a partnership firm registered with the Registrar of Firms vide Registration No. 1237/93 dated 07.06.1993 and is engaged in the business of sale and supply of building materials.

(b) Admittedly, the appellant and respondent have often transacted with each other. According to the respondent, the appellant made various purchases on credit from them for which payments were made in parts and the same were credited to his account maintained by them. It is alleged by the respondent that after adjusting all the payments being made by the appellant, an amount of Rs.4,35,250.18 is due against his firm. Despite repeated demands, requests, and reminders, the appellant has not cleared the outstanding amount. Therefore, the respondent sent legal notice dated 11.04.2005 to the appellant through his counsel calling upon him to pay the outstanding dues along with interest @ 2%

per month. Despite notice, the appellant did not pay any amount, therefore, the respondent instituted a suit against him for recovery of sum of Rs.4,35,250.18 along with interest accrued thereon. After the arguments were concluded in the suit on 27.10.2009, the matter was adjourned for judgment on 03.11.2009.

(c) In the meantime, on 31.10.2009 the respondent moved two applications, one under Order VII Rule 14 read with Section 151 of the Code of Civil Procedure, 1908 (in short "CPC") for placing on record certain documents and the other under Order XVIII Rule 17 read with Section 151 of CPC for seeking permission to recall PW-1 for proving certain documents by leading his additional evidence. By order dated 25.02.2010, the Additional District Judge, Delhi dismissed both the applications.

(d) Dissatisfied with the said order, the respondent filed revision petition being CM (M) No. 707 of 2010 (Civil Revision No. 707 of 2010) before the High Court of Delhi. The learned single Judge of the High Court by impugned order dated 23.08.2011 allowed the revision and set aside

the order dated 25.02.2010 passed by the Additional District Judge, Delhi.

(e) Aggrieved by the said order, the appellant has preferred this appeal by way of special leave.

4) Heard Mr. Siddharth Yadav, learned counsel for the appellant and Mr. Jinendra Jain, learned counsel for the respondent.

5) The only point for consideration in this appeal is whether the plaintiff has made out a case for allowing the applications one filed under Order XVIII Rule 17 read with Section 151 CPC and another application under Order VII Rule 14 read with Section 151 CPC? The trial Court dismissed both the applications, however, the High Court by the impugned order set aside the order of the trial Court and directed taking on record the bills which are proposed to be filed by the plaintiff, granted permission to recall PW-1 to prove those bills. The High Court passed such order in favour of the plaintiff subject to payment of cost of Rs.5,000/-

6) In order to find out the acceptability of the impugned order or not, it is useful to refer the relevant provisions of the CPC which read thus:

> **"**Order VII Rule 14
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> **14. Production of document on which plaintiff sues or relies.-** (1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.
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> (2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.
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> (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.
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> (4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory."
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> Order XVIII Rule 17
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> **"17. Court may recall and examine witness.-** The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit."
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> Section 151 of CPC
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> **"151. Saving of inherent powers of Court.-** Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may

be necessary for the ends of justice or to prevent abuse of the process of the Court."

7) Before going into the merits of claim of both the parties, let us recapitulate the views expressed by this Court through recent decisions.

8) In ***Vadiraj Naggappa Vernekar (dead) through LRs.*** vs. ***Sharadchandra Prabhakar Gogate***, (2009) 4 SCC 410, this Court had an occasion to consider similar claim, particularly, application filed under Order XVIII Rule 17 and held as under:

> **"25.** In our view, though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.
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> **28.** The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.
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> **29.** It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination.

> **31.** Some of the principles akin to Order 47 CPC may be applied when a party makes an application under the provisions of Order 18 Rule 17 CPC, but it is ultimately within the court's discretion, if it deems fit, to allow such an application. In the present appeal, no such case has been made out."

9) If we apply the principles enunciated in the above case and the limitation as explained with regard to the application under Order XVIII Rule 17, the applications filed by the plaintiff have to be rejected. However, learned counsel for the respondent by placing heavy reliance on a subsequent decision, namely, ***K.K. Velusamy*** vs. ***N. Palanisamy***, (2011) 11 SCC 275, submitted that with the aid of Section 151 CPC, the plaintiff may be given an opportunity to put additional evidence and to recall PW-1 to prove those documents and if need arises other side may be compensated. According to him, since the High Court has adopted the said course, there is no need to interfere with the same.

10) In ***Velusamy (supra)*** even after considering the principles laid down in ***Vadiraj Naggappa Vernekar (supra)*** and taking note of Section 151 CPC, this Court concluded that in the interests of justice and to prevent

abuse of the process of the Court, the trial Court is free to consider whether it was necessary to reopen the evidence and if so, in what manner and to what extent. Further, it is observed that the evidence should be permitted in exercise of its power under Section 151 of the Code. The following principles laid down in that case are relevant:

> **"19.** We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.

With these principles, let us consider the merits of the case in hand.

11) The perusal of the materials placed by the plaintiff which are intended to be marked as bills have already been mentioned by the plaintiff in its statement of account but the

original bills have not been placed on record by the plaintiff till the date of filing of such application. It is further seen that during the entire trial, those documents have remained in exclusive possession of the plaintiff but for the reasons known to it, still the plaintiff has not placed these bills on record. In such circumstance, as rightly observed by the trial Court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of judgment, we are of the view that the plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him. As rightly observed by the trial Court, there is no acceptable reason or cause which has been shown by the plaintiff as to why these documents were not placed on record by the plaintiff during the entire trial. Unfortunately, the High Court taking note of the words "at any stage" occurring in Order XVIII Rule 17 casually set aside the order of the trial Court, allowed those applications and permitted the plaintiff to place on record certain bills and also granted permission to recall PW-1 to prove those bills. Though power

under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of the court and Court can exercise its discretion to permit reopening of evidence or recalling of witness for further examination/cross-examination after evidence led by the parties, in the light of the information as shown in the order of the trial Court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 of CPC, the plaintiff cannot be permitted.

12) After change of various provisions by way of amendment in the CPC, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and

acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial Court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still plaintiff has not placed those bills on record. It further shows that final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 CPC.

13) Under these circumstances, the impugned order of the High Court dated 23.08.2011 in C.M. No. 707 of 2010 (Civil

Revision No. 707 of 2010) is set aside and the order dated 25.02.2010 of the trial Court is restored.

14) The appeal is allowed with no order as to costs.

.....J.
(P. SATHASIVAM)

.....J.
(JAGDISH SINGH KHEHAR)

NEW DELHI;
FEBRUARY 22, 2013.