

Civil Revision
Present : The Hon'ble Mr. Justice Prasenjit Mandal

Judgement On: October 5, 2010.
C.O. No. 2143 of 2005

Mustaque Ahmed Khan & ors.

Versus
Mahammad Nasim & Ors.

Point:

EXPUNGING OF EVIDENCE- Evidence was tendered by the plaintiff by way of an affidavit- Seeking a direction for Expunging of evidence on irrelevant matters at the stage of recording evidence ,whether permissible- Code of Civil Procedure, 1908, Order 18 Rule 4

Facts:

The opposite party instituted a Title Suit being T. S. No.212 of 1997 for eviction of the defendants on the ground of default and reasonable requirement. In that suit, the defendants/petitioners appeared and filed a written statement. The suit was at the stage of recording evidence. At that time, the plaintiff tendered evidence of the P.W.1 by way of an affidavit under Order 18 Rule 4 of the C.P.C. The defendants/petitioners filed an application dated October 1, 2004 for expunction of certain portion of the evidence which was not based on the plaint case. That application was not allowed. Being aggrieved, Hence this application.

Held:

The evidence was tendered by the plaintiff by way of an affidavit under Order 18 Rule 4 of the C.P.C. If the evidence exceeds the pleading, that evidence cannot be accepted. Since the examination-in-chief was tendered by the plaintiff by way of an affidavit under Order 18 Rule 4 of the C.P.C., there was no scope to check the irrelevant portion of the evidence on record. But if the learned Trial Court is to judge which portion of the evidence is beyond pleadings when tendered by way of an affidavit, such a recourse would hamper the progress of the suit and so there may be delay in the matter of disposal of the suit. In view of the decision of Amiya Kumar Majumdar, the learned Trial Judge has rightly passed the order for keeping the said petition with the record for consideration at the time of writing the judgment. **Para-6**

Cases Cited:

Amiya Kumar Majumdar Vs. Gouri Prosad Ghosh reported in 1989 (1) CLJ 261.

For the petitioners: Mr. Tarak Nath Halder.

For the opposite parties: Mr. Siva Prasad Ghosh.

The Court:

This application is at the instance of the defendants and is directed against the order no.58 dated December 21, 2004 passed by the learned Civil Judge (Junior Division), First Court at Sealdah in Title Suit No.212 of 1997 thereby passing orders for keeping the petition dated October 1, 2004 filed by the petitioners with the record.

2. The opposite party instituted a Title Suit being T. S. No.212 of 1997 for eviction of the defendants on the ground of default and reasonable requirement. In that suit, the defendants/petitioners appeared and filed a written statement. The suit was at the stage of recording evidence. At that time, the plaintiff tendered evidence of the P.W.1 by way of an

affidavit under Order 18 Rule 4 of the C.P.C. The defendants/petitioners filed an application dated October 1, 2004 for expunction of certain portion of the evidence which was not based on the plaint case. That application was not allowed by the learned Trial Judge but he kept the same with the record for consideration at the time of writing the judgment. Being aggrieved, this application has been filed.

3. Mr. Halder, learned Advocate appearing on behalf of the applicant, submits that if the evidence is tendered by the plaintiff by way of affidavits under Order 18 Rule 4 of the C.P.C. and if it exceeds beyond the pleading of the plaintiff, it should be expunged.

4. On the contrary, Mr. Ghosh, learned Advocate appearing on behalf of the opposite party, submits that expunction of the evidence is not permissible and so the learned Trial Judge has rightly passed the order for keeping the application for consideration at the time of writing judgment. In support of his contention, Mr. Ghosh has referred to the decision of *Amiya Kumar Majumdar Vs. Gouri Prosad Ghosh* reported in 1989 (1) CLJ 261.

5. Therefore, the question that arises for decision is whether the impugned order should be sustained.

6. Upon hearing the learned counsel for the parties and on perusal of the materials on record, I find that the evidence was tendered by the plaintiff by way of an affidavit under Order 18 Rule 4 of the C.P.C. If the evidence exceeds the pleading, that evidence cannot be accepted. Since the examination-in-chief was tendered by the plaintiff by way of an affidavit under Order 18 Rule 4 of the C.P.C., there was no scope to check the irrelevant portion of the evidence on record. But if the learned Trial Court is to judge which portion of the evidence is beyond pleadings when tendered by

way of an affidavit, such a recourse would hamper the progress of the suit and so there may be delay in the matter of disposal of the suit. For that reason, the learned Trial Judge has kept the application dated October 1, 2004 filed by the defendants/petitioners for consideration of the same at the time of writing the judgment. The decision of Amiya Kumar Majumdar (supra) is very much relevant here which clearly lays down that expunging is not permissible on irrelevant matters at the stage of recording evidence. The proper stage is the time for assessment of evidence, that is, at the time of making argument by the parties and writing the judgment by the learned Trial Judge subsequently. Therefore, in view of the said decision of Amiya Kumar Majumdar (supra), I am of the opinion that the learned Trial Judge has rightly passed the order for keeping the said petition with the record for consideration at the time of writing the judgment. Therefore, there is no scope of interference with the impugned order.

7. Accordingly, this application fails to succeed. It is, therefore, dismissed.

8. Considering the circumstances, there will be no order as to costs.

9. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

(Prasenjit Mandal, J.)