

29/8/19
PLMISra

Hon'ble S.U.Khan, J.
Hon'ble Sudhir Agarwal, J.
Hon'ble D.Y.Sharma, J.

This is an application filed on behalf of defendant No.20 purported to be under Order VIII Rule 1-A (3) read with Section 151 C.P.C. praying for taking on record as evidence the books along with computerized reproduction/photocopies/Xerox copies of the relevant pages of the said printed books mentioned in the application and a list whereof has been filed as Annexure-1 to the application.

It has been stated that all the said books were not in possession of the applicant and the relevant facts contained therein were also not known to him. The patron of the applicant when consulted Sri P.N.Mishra, Advocate at Calcutta in respect of the suit in question, thereupon the learned counsel gave a list of the books to be purchased and pursuant thereto the said books have been purchased. After going through the said books, the applicant found that the same are of vital importance for the purpose of proper adjudication of the case and therefore, prayer has been made to take up the said books etc. as evidence.

Having heard Sri P.N.Mishra, Advocate assisted by Ms. Ranjana Agnihotri for the applicant at length we, however, find no substance in the said request. The fallacy in the statement that the applicant was not aware of the contents of the book is evident from the fact that out of sixty-four books, listed in Annexure-1, a number of books were already made available to the Court by the parties and certain pages of several such books are already exhibits in one or the other connected suits including leading suit-4 also. For example Babur-Nama (Memoirs of Babur) translated in english by A.S. Beveridge mentioned at serial No.31 of Annexure-1 and A-in-i-Akbari by Abul Fazi Allami, translated into english by H.Blochmann and H.S.Jarrett mentioned at serial No.32, 33 and 34 Annexure-1 are not only already before the Court but several pages of these two books are also exhibits in one or the other connected matters. Similarly Epigraphica Indica Arabic & Persian Supplement, 1961 and 1965 mentioned at Serial No.37, Annexure -1 to the

application, Gazetteer of the Territories under the Government of the East India Company and of the Native States on the Continent of India, 1852 by Edward Thornton (Serial No.57) Annexure -1 are also such kind of books. Therefore, the statement of the applicant in para 2 of the application in respect of all the books that he was not aware of their contents is neither correct nor can be accepted. Besides, it would be too late in the day, at this stage to allow the applicant's request for placing on record certain documents as exhibits when not only the stage of filing of documents (oral evidence) is over but even the examination of witnesses has ended long back and the case is at the stage of final hearing when the counsels for the plaintiff in the leading suit have already concluded their arguments. Similarly, the arguments of the defendants No.3 (Nirmohi Akhara) have also concluded. We also find that all the alleged documents are said to be the copies of the published books of history, religion, culture, travelling accounts, gazetteer etc. and therefore such books can be taken into consideration by the Court in this case in exercise of its power under Section 57(13) read with Section 45 of the Evidence Act.

We therefore find no reason at this stage to allow this application for taking the extract of certain pages of the books, mentioned in the list i.e. Annexure-1 to the application, as evidence but permit learned counsel for the applicant to place the authenticated books of religion, culture, history, archeology etc. before this Court during the course of argument since such books can be looked into by this Court under Section 57(13) of the Evidence Act.

Subject to observations above, the application is rejected.

Date: 18.03.2010
KA

Sd/- S. U. Khan
Sd/- Sudhir Aggarwal
Sd/- D. V. Sharma