



A. No.4046 of 2024
in
C.S. (Comm. Div.) No.301 of 2023

ABDUL QUDDHOSE.J.,

Tube Investments of India Ltd.,

... Applicant

Vs.

M/s.Dhiraj Industries Private Limited

... Respondent

This application has been filed by the plaintiff, seeking leave of this Court to bring on record the documents disclosed in Schedule A to the Judges Summons as additional documents filed by the plaintiff.

2. The documents disclosed in Schedule A to the Judges Summons of this application are as follows:

- a) List of the authorized dealers of the applicant / plaintiff (Printout);
- b) Testing report of the plaintiff's product and defendant's counterfeit product from Ulogam Analytical Services dated 27.02.2024; and
- c) Testing report of the plaintiff's product and defendant's counterfeit product from TIDC India.

3. The aforesaid documents were not filed along with the plaint. According to the plaintiff, it became necessary to file the same as additional documents only due to the fact that a defence was taken by the defendant in its written statement that the defendant is not selling spurious or counterfeit



products as claimed by the plaintiff.

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4. The plaintiff also contends that it became necessary for them to file this application due to the fact that the defendant in its written statement has pleaded that they are buying the products from M/s. JVC bearings, an authorized dealer of the plaintiff.

5. According to the plaintiff, M/s. JVC bearings is not their authorized dealer and only to prove the same, it became necessary for them to file the list of their authorized dealers as an additional document. According to the plaintiff, the non filing of the documents disclosed in Schedule A to the Judges Summons of this application is neither willful nor wanton but solely due to the reason stated supra.

6. A counter affidavit has been filed by the respondent, contending as follows:

a) This application has been filed belatedly as the same has been filed at a time when the Trial is about to commence and the respective witnesses have already filed their proof affidavits;

b) Documents sought to be produced by the plaintiff are new



documents that originated subsequent to the filing of the suit and they were not pleaded in the plaint; The Commercial Courts Act, 2015 does not permit production of new documents that originated subsequent to the filing of the suit;

c) Only to fill up the *lacuna* and to improve the case of the plaintiff, the plaintiff is seeking to introduce two testing reports which are disclosed in Schedule A to the Judges Summons;

d) The testing reports are unreliable documents, obtained subsequent to the filing of the suit and therefore, they cannot be allowed to be received by way of additional documents;

e) By seeking to introduce the additional documents, the plaintiff is seeking to alter the very nature of the suit claim. The testing reports were in possession of the plaintiff since February - March, 2024, but, they have filed this application only in August, 2024. This application filed by the plaintiff is an abuse of process of law especially without adherence to the time line which is a crucial aspect under the Commercial Courts Act, 2015.

7. Heard Mr.Arun C Mohan, learned counsel for the applicant /



plaintiff and Ms.Elizabeth Seshadri, learned counsel for the respondent / defendant.

8. In support of this application, the learned counsel for the applicant / plaintiff drew the attention of this Court to an order passed by this Court on **29.01.2024 in A.No.222 of 2024 in C.S. No.14 of 2021** in the case of ***N.Ranga Rao and Sons Private Ltd., Vs. ITC Ltd.*** He would submit, relying upon the aforesaid decision, that, in similar circumstances, an application filed for receiving additional documents was allowed. On the other hand, the learned counsel for the respondent / defendant would submit that none of the provisions of Commercial Courts Act, 2015 permit the applicant / plaintiff to file an application of this nature. According to her, Order XI Rule 1 (4) and (5) of C.P.C. as applicable to the Commercial Courts Act, 2015 empowers this Court to grant leave only when the applicant / plaintiff was in possession of the documents even prior to the filing of the suit. She would submit that Order XI of C.P.C. as applicable to Commercial Courts Act, 2015 does not empower the applicant / plaintiff to seek leave of this Court for filing additional documents which are post suit documents.



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9. The learned counsel for the respondent / defendant relied upon the following authorities in support of her contentions that the present application is not maintainable:

a) *Sudhir Kumar Alias S. Balaiyan Vs. Vinay Kumar G.B.* reported in *2021 (13) SCC 71*;

b) *Casa 2 Stays Pvt. Ltd., Vs. VLCC Personal Care Ltd.* reported *2024 SCC Online Del 4587*;

10. The learned counsel for the respondent / defendant also submitted that this application has been filed by the applicant / plaintiff quoting a wrong provision under the Commercial Courts Act, 2015 as the said provision only enables the defendant to file an application and not the applicant / plaintiff.

Discussion:

11. Admittedly, the additional documents for which leave is sought for by the applicant / plaintiff in this application are post suit documents. The documents are testing reports and list of authorized dealers. In the affidavit



filed in support of this application, a specific plea has been taken by the applicant / plaintiff that only due to the fact that the respondent / defendant had taken a defence in their written statement that they are not selling spurious products and that they are purchasing the same only from an authorized dealer, there became a necessity for the applicant / plaintiff to file the additional documents for which leave is sought for in this application. The additional documents are

- a) List of the authorized dealers of the applicant / plaintiff (Printout);
- b) Testing report of the plaintiff's product and defendant's counterfeit product from Ulogam Analytical Services dated 27.02.2024; and
- c) Testing report of the plaintiff's product and defendant's counterfeit product from TIDC India.

12. While filing the suit at the first instance, the applicant / plaintiff has filed documents along with the plaint. The suit filed by the applicant / plaintiff is a suit for infringement and for passing off. Prior to the filing of the suit, the applicant / plaintiff had sent a cease and desist notice to the respondent / defendant. Admittedly, the same was not replied to by the respondent / defendant. Only for the first time, through the written statement



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filed by the respondent / defendant, the applicant / plaintiff came to know that the respondent / defendant had purchased the products from a dealer, who according to the respondent / defendant is an authorized dealer. The respondent / defendant has also categorically contended that the product sold by them are genuine products and are not spurious ones as claimed by the applicant / plaintiff. The reasons given by the applicant / plaintiff in the affidavit filed in support of this application for not filing the documents at the first instance for which leave is sought for in this application viz., that only after filing of the written statement by the respondent / defendant, it became necessary for them to obtain the testing reports and to file the list of authorized dealers, seems to be a plausible and satisfactory reason.

13. This Court after carefully examining the provisions of Commercial Courts Act, 2015 more particularly Order XI of C.P.C. as applicable to the Commercial Courts Act, 2015, is of the view that the Act does not provide for a situation of the nature faced by the applicant / plaintiff as pleaded by the applicant / plaintiff in this application. Order XI Rule 1 (4) of C.P.C. as applicable to Commercial Courts Act, 2015, provides for seeking leave by the plaintiff to file additional documents in case of urgent filing. But,



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however, as per the said provision, the plaintiff will have to necessarily file the additional documents within 30 days from the date of the filing of the suit. Order XI Rule 1 (5) of the C.P.C. as applicable to Commercial Courts Act, 2015 also enables the plaintiff to file additional documents with the leave of the Court only if the said additional documents were in the plaintiff's power, possession, control or custody even at the time of filing of the suit.

14. The case on hand does not fall under any of the aforementioned categories. The aforementioned categories are the only instances where the plaintiff is empowered under the Commercial Courts Act, 2015 to file an application seeking leave of this Court to file additional documents.

15. A party should not be left remediless when he has established before the Court the necessity to file additional documents of the nature for which leave is sought for in this application. When the Commercial Courts Act, 2015 does not provide for a situation as faced by the applicant / plaintiff, the inherent powers of this Court comes into play. Section 151 of C.P.C. provides for the inherent powers of this Court. When it has become a dire necessity for the applicant / plaintiff to file the additional documents,



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they cannot be left high and dry just because the Commercial Courts Act, 2015 does not contain specific provision which enables the applicant / plaintiff to file the instant application.

16. In cases where there became a dire necessity for any of the parties to the suit to file additional documents, but there is no specific provision under the Commercial Courts Act, 2015 to seek leave of the Court for filing those documents, this Court will have to come to the rescue of the said party by exercising the inherent powers under Section 151 of C.P.C. The provisions of the Commercial Courts Act, 2015 also does not prohibit this Court from entertaining such an application, that too when the plaintiff has satisfied this Court that there is a dire necessity for them to file the additional documents.

17. Under the C.P.C. as well as the provisions of the C.P.C. as applicable to Commercial Courts Act, 2015, some hidden powers are vested with the Courts while exercising its powers under Section 151 of C.P.C., according to the emerging situation during the course of the proceedings. When there is no express prohibition for exercising those powers and there



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became a dire necessity for one of the parties to approach the Court for exercising the inherent power, the Court cannot be a mute spectator but instead grant relief as prayed for in the interest of justice. While exercising powers under Section 151 of C.P.C., the following rules in order to achieve the ends of justice has to be followed by the Courts:

- a) It is in the ends of justice that injury should be remedied and needless expenses and inconvenience to parties be avoided;
- b) It will not be in the ends of justice to exercise inherent powers if it would interfere with the interest of third party or cause mischief or injustice;
- c) To prevent the abuse of process of Court.

18. Section 151 of C.P.C. has to be interpreted in a manner which would mean that the Court is permitted to pass any orders for doing complete justice unless the same has been expressly prohibited under the statute. Unless the power exercised by the Courts under Section 151 of C.P.C. has been expressly prohibited under the statute, then it is not correct to interpret Section 151 of C.P.C. to mean that every procedure is prohibited unless expressly permitted.



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19. Since the circumstances under which this application came to be filed by the plaintiff are unique and has emerged on account of the plea taken by the defendant, the plaintiff cannot be left remediless despite the fact that they have satisfied this Court that there became a dire necessity for them to file the additional documents as disclosed in the Schedule A to the Judges Summons. Necessarily, this Court will have to apply Section 151 of C.P.C. by exercising its inherent powers so that the applicant / plaintiff is not left high and dry. When there is no express statutory bar to entertain the instant application, this Court is of the considered view that when the applicant / plaintiff has satisfied this Court the dire necessity to file the additional documents, this application is maintainable.

20. Quoting wrong provision of law will not deprive a person from getting the relief, if the person is legally entitled to get the same. The aforesaid proposition is well settled by various decisions of the Constitutional Courts. In the case on hand, though the plaintiff has quoted a wrong provision of law for filing additional documents, that will not bar the plaintiff from getting the desired relief once they have satisfied this Court the dire necessity to file this application seeking leave of this Court to file



additional documents as disclosed in Schedule A to the Judges Summons.

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21. The judgments relied upon by both the counsel for the applicant / plaintiff as well as the respondent / defendant are judgments pertaining to applications filed under Order XI of C.P.C. as applicable to the Commercial Courts Act, 2015 and those judgments do not pertain to a situation of the nature faced by the applicant / plaintiff as pleaded in the affidavit filed in support of this application. Therefore, those judgments are irrelevant for deciding this instant application.

22. For the foregoing reasons, this Court by exercising its inherent power under Section 151 of C.P.C. has to necessarily allow this application by permitting the applicant / plaintiff to file the additional documents as disclosed in the Schedule A to the Judges Summons and take them on record. However, the documents taken on record by this Court are received only subject to its admission, proof and relevancy since the defendant is always having the liberty to cross examine the plaintiff's witnesses with regard to the admissibility, veracity and the relevancy of the additional documents.



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23. In the result, this application is allowed as prayed for and the applicant / plaintiff is permitted to bring on record the documents as disclosed in Schedule A to the Judges Summons of this application as additional documents. However, the said documents received by this Court are subject to its admission, proof and relevancy and the defendant is permitted to cross examine the plaintiff's witnesses with regard to the admissibility, veracity and relevancy of those documents. The concerned learned Master while recording evidence is permitted to record the objections raised by the respondent / defendant in respect of the additional documents disclosed in the Schedule A to the Judges Summons while marking those documents as exhibits on the side of the applicant / plaintiff and thereafter, proceed with the Trial till its completion. It is made clear that any observation made by this Court in this order will not have any bearing on the final adjudication of the suit.

04.11.2024

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No
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