



A. No.4194 of 2023 in C.S. (Comm.Div.) No.24 of 2023

ABDUL QUDDHOSE,J.

This application has been filed by the applicant/plaintiff seeking for reception of additional documents.

2.The additional documents sought to be received by this Court are disclosed in paragraph No.13 of this application as well as in the judges summons. The applicant/plaintiff has filed the suit seeking for the following reliefs:

a)Granting a permanent injunction restraining the defendant from using the Schedule Mentioned Equipment belonging to the plaintiff in any manner including but not limited to exhibition, screening, display of cinematograph films, advertisement, DAVP, short films or any other content;

b)Granting an order of direction the defendant to hand over the Schedule Mentioned Equipment to the plaintiff immediately in fair and working condition;

c)Alternative to prayer in para 24(b), in the event where this Court coming to a conclusion that the relief in para 24(b) is not grantable, this Court may kindly be pleased to direct the defendant to pay a sum of INR 1,21,02,500/- (Indian Rupees One Crore Twenty One Lakhs Two Thousand Five Hundred only) as damages to the plaintiff towards the value of the equipment;

d)Direct the defendant to pay to the plaintiff the cost of the suit.



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3.The applicant/plaintiff claims that to fortify the applicant's/plaintiff's case, the additional documents are sought to be received by this Court in view of the defence raised by the respondent/defendant in the written statement. The respondent/defendant had entered into a contract with the predecessor in title of the applicant/plaintiff. The applicant/plaintiff has acquired rights under a Sale Agreement entered into with his predecessor in title. The respondent/defendant was entrusted with the Digital Sound Equipment by the applicant's/plaintiff's predecessor in title under a contract. The applicant/plaintiff claims that they have purchased the business of their predecessor in title with whom the respondent/defendant had a contract and hence, they are entitled to file a suit against the respondent/defendant for non payment of dues as per the contract entered into between the respondent/ defendant and the applicant's/plaintiff's predecessor in title, i.e. M/s.Pro Visual Audio Private Limited, in short 'PROVA'. According to the applicant/plaintiff, the respondent/defendant had committed breach of contract with the applicant's/plaintiff's predecessor in title and therefore, they are entitled for the suit claim.

4.A written statement has been filed by the respondent/defendant disputing their liability. They would categorically contend that there is no privity of contract between the respondent/defendant and the applicant/plaintiff and that they do not



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owe any money to the applicant/plaintiff. On receipt of the written statement by the respondent/defendant, the applicant/plaintiff has filed this application seeking for reception of additional documents. According to the applicant/plaintiff, since the respondent/defendant has disputed the liability and has also contended that there is no breach of contract between the applicant/plaintiff and the respondent/defendant, it became necessary for the applicant/plaintiff to file additional documents to fortify their claim. However, the same has been disputed as seen from the counter affidavit filed by the respondent/defendant on the ground that the documents sought to be received by this Court were very much available with the applicant/plaintiff even at the time of filing of the suit and therefore at this stage, leave cannot be granted by this Court for permitting the applicant/plaintiff to file additional documents. They also categorically contend that the suit filed by the applicant/plaintiff is not maintainable as there is no privity of contract between the applicant/plaintiff and the respondent/defendant. They would also contend that no reasonable cause has been shown by the applicant/plaintiff for filing this application after the respondent/defendant has filed his written statement. They would also contend that there is no power for this Court to grant leave under the Commercial Courts Act, 2015 beyond the period of 30 days from the date of filing of the written statement for the applicant/plaintiff to file additional documents.



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5.Learned counsel for the applicant/plaintiff drew the attention of this Court to Order XI Rule 1(5) of the C.P.C. as applicable to the Commercial Courts Act, 2015 and would submit that this Court is having the power to grant leave as prayed for in this application as reasonable cause is shown by the applicant/plaintiff for non disclosure of the documents along with the plaint. He also drew the attention of this Court to Order XI Rule 1(c) of the C.P.C. as applicable to the Commercial Courts Act, 2015. He would submit that a specific defence has been taken by the respondent/defendant in the written statement that there is no privity of contract between the applicant/plaintiff and the respondent/ defendant and therefore, they are not liable to pay the suit claim which necessitated the filing of this application.

6.On the other hand, the learned counsel for the respondent/defendant would reiterate the contents of the counter affidavit filed in this application and would further state that when the documents were very much available with the applicant/plaintiff even at the time of filing of the suit, the question of granting leave by this Court, at this stage, that too when the written statement has already been filed, will not arise. He would submit that Order XI Rule 1(5) of C.P.C. as applicable to the Commercial Courts Act, 2015 will not apply to the case on hand as no reasonable cause has been shown by the applicant/plaintiff for filing this application.

7.In support of his submission, he drew the attention of this Court to the



judgment of the Hon'ble Supreme Court in Sudhir Kumar @ S.Baliyan vs. Vinay Kumar G.B. arising out of Civil Appeal No.5620 of 2021, a decision rendered by the Hon'ble Supreme Court on 15.09.2021. Relying upon the said decision, the learned counsel for the respondent/defendant would submit that the instant application cannot be entertained by this Court as reasonable cause has not been shown by the applicant/plaintiff for not filing the documents at the time of filing the suit. Order XI Rule 1(4) and (5) of C.P.C. as applicable to the Commercial Courts Act, 2015 is extracted hereunder:.

'(4) In case of urgent filings, the plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath and subject to grant of such leave by Court, the plaintiff shall file such additional documents in Court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession, control or custody.

(5) The plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint.'

8.As seen from the aforementioned Rules, in case of urgent filings, the applicant/plaintiff may seek leave to rely on the additional documents at the time



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of filing of the suit and the said additional documents shall be filed within 30 days of filing the suit along with a declaration on oath that the applicant/plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the applicant/plaintiff and that the applicant/plaintiff does not have any other documents in its power, possession, control or custody. The above mentioned power to grant leave is in terms of Order XI Rule 1(4) of the C.P.C. as applicable to the Commercial Courts Act 2015 as extracted supra. However, in addition to that, this Court is having the power to grant leave for filing of additional documents beyond the period of 30 days, provided reasonable cause is shown by the applicant/plaintiff for non disclosure along with the plaint as per Order XI Rule 1(5) of C.P.C. as applicable to the Commercial Courts Act, 2015.

9.The present application has been filed by the applicant/plaintiff seeking leave only under Order XI Rule 1(5) of C.P.C. as applicable to the Commercial Courts Act, 2015. The reason given by the applicant/plaintiff for not filing the additional documents at the time of filing the suit are as follows:

a)Fresh stand has been taken by the respondent/defendant in their written statement, which necessitated the applicant/plaintiff to file this application seeking



for reception of additional documents;

b)The additional documents sought to be accepted by this Court are relevant documents, required to prove the suit claim made by the applicant/plaintiff.

10.However, the respondent/defendant, as stated supra, has contended that the documents cannot be received by this Court, at this stage, when the respondent/defendant has filed its written statement. Further, it is contended by them that no reasonable cause has been shown by the applicant/plaintiff for filing the additional documents. As observed earlier, by virtue of Order XI Rule 1(5) of C.P.C. as applicable to the Commercial Courts Act 2015, this Court is having the power to grant leave for filing additional documents, provided reasonable cause is shown for non disclosure of the same in the plaint, filed at the time of filing of the suit.

11.In the instant case, as seen from the plaint averments, the applicant/plaintiff has categorically contended that they have purchased the business interest of the predecessor in title under a contract. They have also contended that the respondent/defendant had entered into a contract with the predecessor in title and they have committed breach of contract. Having acquired the rights, the applicant/plaintiff categorically contends that they are entitled to file a suit against



the respondent/defendant. The documents for which leave is sought for by the applicant/plaintiff are detailed hereunder:

S.Nos.	Date	Document	Nature of documents
12.	31.12.2018	Commercial Sale Invoice between PROVA and the plaintiff	Photocopy
13.	04.06.2019 & 25.06.2019	Commercial Invoice along with Export Packing List by Klipsch to the TSR PROVA Pvt. Ltd.	Photocopy
14.	09.03.2020	Commercial Invoice from Dolby to the plaintiff	Photocopy
15.	10.03.2020	Commercial Invoice from IRDK Land Sendirian Berhad to the plaintiff	Photocopy
16.	02.05.2019 - 21.08.2019	Technical Support and service done by the plaintiff to the equipment at the defendant's theatre premises	Photocopy
17.	13.12.2018 to 27.12.2018	Release order relating to delivery of film content in Digital Format and issuance of KDM (license) for the year 2018	Photocopy
18.	03.01.2019 - 12.12.2019	Release order relating to delivery of film content in Digital Format and issuance of KDM (License) for the year 2019	Photocopy
19.	02.01.2020 - 19.11.2020	Release order relating to delivery of film content in Digital Format and issuance of KDM (License) for the year 2020	Photocopy
20.	12.01.2021	Release order relating to delivery of film content in Digital Format and issuance of KDM (License) for the year 2021	Photocopy
21.	12.01.2022 - 30.08.2022	Release order relating to delivery of film content in Digital Format and issuance of KDM (License) for the year 2022	Photocopy
22.	16.05.2018 - 29.12.2018	Release order and Purchase Order of Advertisement for the year 2018	Photocopy
23.	02.01.2019 - 26.11.2019	Release order and Purchase order of Advertisement for the year 2019	Photocopy
24.	13.01.2021 - 25.11.2021	Release order and Purchase order of Advertisement for the year 2021	Photocopy
25.	02.03.2022 - 11.04.2021	Release order and purchase order of Advertisement for the year 2022	Photocopy



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12.The aforementioned documents include Invoices, Release Orders, Technical Supporting documents to show that the service is done by the applicant/plaintiff to the equipment at the respondent's/defendant's theatre premises, Release order relating to delivery of film content in Digital Format and the Commercial Sale Invoice dated 31.12.2018 by which 'PROVA', the company with whom, the respondent/defendant had a contract, had sold the business interest to the applicant/plaintiff.

13.As seen from the documents, they are relevant documents to prove the applicant's/plaintiff's suit claim. Though the respondent/defendant may contend that there is no privity of contract between the respondent/defendant and the applicant/plaintiff, but they admit that they had a contractual relationship with M/s.PROVA, the applicant's/plaintiff's predecessor in interest. They have also not stated that they have fully paid the dues of M/s.PROVA though they may contend that they are having a counter claim against M/s.PROVA but they have not produced any documentary evidence to show that the contract entered into between M/s.PROVA and the respondent/defendant has been fully discharged.

14.No prejudice will be caused to the respondent/defendant if the documents



are allowed to be received and marked as exhibits, subject to its admission, proof and relevancy. The decision relied upon by the learned counsel for the respondent/defendant has no bearing for the facts of the instant case as that was the decision where Order XI Rule 1(4) of the C.P.C. as applicable to the Commercial Courts Act, 2015 was under consideration by the Hon'ble Supreme Court, whereas in the instant case, leave is sought for by the applicant/plaintiff under Order XI Rule 1(5) of C.P.C. as applicable to the Commercial Courts Act, 2015, which enables this Court to grant leave beyond the period of 30 days from the date of filing of the suit, provided reasonable cause is shown by the applicant/plaintiff for not filing the documents at the time of filing of the suit.

15. This Court is of the considered view that reasonable cause has been shown for the reasons stated supra by the applicant/plaintiff for not filing the documents along with the plaint at the time of filing of the suit. In the instant case, issues are yet to be framed and the suit is not ripe for trial. Allowing this application will not delay the trial. This application has also been filed immediately after filing of the written statement by the respondent/defendant. A categorical assertion has also been made that only due to the defence raised in the written statement, it became necessary for the applicant/plaintiff to file this application.



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16. After giving due consideration to the aforementioned factors, this Court is of the considered view that reasonable cause has been shown by the applicant/plaintiff for filing this application and therefore, leave has to be granted by this Court for permitting the applicant/plaintiff to file the additional documents as disclosed in the affidavit filed in support of this application. The documents, on a prima facie consideration of this Court, seems to be relevant for the applicant/plaintiff to prove the suit claim. As observed earlier, no prejudice would be caused to the respondent/defendant if the application is allowed and the documents are allowed to be received and marked as exhibits, subject to its admission, proof and relevancy. The respondent/defendant is always at liberty to cross examine the applicant's/plaintiff's witness with regard to its veracity and admissibility as a piece of evidence at the time of trial. If any objection is made by the respondent/defendant with regard to the marking of the documents, the same can also be recorded during the time of trial.

ABDUL QUDDHOSE, J.

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17. For the foregoing reasons, this application is allowed as prayed for. However, the documents, allowed to be received and marked as exhibits on the



side of the applicant/plaintiff, are allowed to be marked, subject to its admission, proof and relevancy. However, if the respondent/defendant objects to the marking of the documents, the objections can be recorded during Trial and merits of those objections can be decided by this Court while deciding the suit.

18.However, it is made clear that in case the respondent/defendant objects to the marking of the documents, the learned Additional Master, who is recording the evidence, can record the objections and thereafter, proceed with the trial.

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