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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 03.07.2015

+ **FAO (OS) 324/2015 & CM No.11302/2015 (stay)**

M/S CAPITAL METERS LIMITED & ANR.

.... Appellants

versus

M/S. S. JOHNFLEX INDUSTRIES & ANR.

..... Respondents

Advocates who appeared in this case:

For the Appellants : Mr S.K. Bansal with Mr Ajay Amitabh
Suman, Advocates.

For the Respondents : None.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM No.11303/2015 (exemption)

Exemption is allowed subject to all just exceptions.

FAO (OS) 324/2015 & CM No.11302/2015 (stay)

1. This appeal is preferred against the order dated 25.05.2015 passed by a learned Single Judge of this Court, whereby IA No.1072/2015 filed by the appellant/defendant seeking to bring certain documents was rejected. The documents which were sought to be brought on record are as under:-

“(i) The photographs of the products under the
trademark Capital carrying the

manufacturing year 1987.

- (ii) The ITCC Certificate for the financial year 1987-88.
- (iii) The NSIC certificate dated 22.05.1990 against application of defendant no.1 dated 08.03.1990.
- (iv) KSEB Registration certificate dated 06.12.1988.
- (v) The letter dated 27.03.1987 issued by the Electricity department of UP.
- (vi) No Objection Certificate from UP Pollution Board dated 26.04.1986.
- (vii) UP PWD approval dated 14.05.1987.
- (viii) UP SEB approval dated 25.05.1987.
- (ix) The ISI License valid since the year 1987.
- (x) Surrender letter of defendant no.1 of BIS License.”

2. The learned Single Judge noted that these documents were always available with the defendants/appellants at all times. We may also point out that the said suit was filed in the year 2004. Initially, a written statement was filed by the defendants which was subsequently amended in the year 2008. Issues were framed in the year 2009 and the plaintiffs’ evidence was concluded in the year 2012. Three years later, in the current year, i.e., 2015, the said application being IA 1072/2015 was filed

to bring on record the documents which were, at all times, available with the defendants. A flimsy explanation had been attempted to be given for the non-production of the said documents at an earlier stage. The same can be discerned from paragraph 4 of the application which reads as under:-

“4. That the defendant no.1 is filing the afore mentioned additional documents by way of list of document dated 15.05.2015. The same may be referred to. All the documents are being filed in photocopies. The plaintiff is desirous of producing the same at the trial stage as the same are very important and necessary for the defendant no.1 to produce the same in relation to various proceedings on daily basis. The said document could not have been filed before framing of issues. The afore mentioned documents are very old documents are were lying under various files in godown. The custodian of the afore mentioned documents changed from time to time in the office of the defendant no.1. After much effort, the defendant no.1 was able to obtain the same. The same could not have been filed before framing of issues because of the reasons mentioned herein above. The reasons for not filing the afore mentioned document is beyond the power and control of the plaintiff.”

3. The learned Single Judge has correctly noted that, at this stage, the

defendants (appellants herein) cannot be permitted to rely on the same and that the application does not indicate diligence and seriousness of the defendants. In our view, this is only an attempt to delay the proceedings in the suit.

4. The learned counsel for the appellants placed before us a judgment of the Supreme Court in **Lakshmi and Anr. v. Chinnammal Rayyammal and Ors.:** (2009) 13 SCC 25 in an attempt to support his argument that this Court ought to take the said documents on record. First of all, the said decision of the Supreme Court in *Lakshmi (supra)* was one under Order XIII Rule 10 CPC which is entirely different from the situation which obtains in the present case. Under that provision, the Court may send for the papers from its own record or from other Courts. Here the documents were available with the appellants at all times and admittedly so. The explanation sought to be given by the appellants, as noted above, is clearly untenable. It is in the context of Order XIII Rule 10 that the Supreme Court in *Lakshmi (supra)* made the observation in paragraph 12 which is reproduced herein below:

“12. If bringing on record a document is essential for proving the case by a party, ordinarily the same should not be refused;

the Court's duty being to find out the truth. The procedural mechanics necessary to arrive at a just decision must be encouraged. We are not unmindful of the fact that the court in the said process would not encourage any fishing enquiry. It would also not assist a party in procuring a document which he should have himself filed."

Even in the said observation of the Supreme Court, the word 'ordinarily' has been used. The present case does not fall in that category. Here, no plausible explanation has been given for not producing the documents despite the suit having been filed in 2004 and even the written statement having been amended in 2008, particularly, when the documents were all along said to be available with the appellants.

5. In the factual matrix of the present case, we do not find any error in the impugned order whereby the learned Single Judge has refused the appellant/defendant's request for taking on record the said documents.

6. The appeal has no merit. The same is dismissed.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

JULY 03, 2015/st