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

+ FAO(OS) 21/2018 & CM No.4610/2018

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Date of decision : 24th May, 2018

MANISHA VIJ & ORS

..... Appellants

Through : Mr. V. Shekhar, Sr. Adv. with
Mr. Divyakant Lahoti, Mr.
Ninad Dogra and Mr. Shashank
Shekhari, Advs.

versus

M/S HSIL LTD

..... Respondent

Through : Mr. Manav Gupta, Ms. Esha
Dutta and Mr. Sahil Garg,
Advs.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. By this appeal, the appellants assail the order dated 19th January, 2018 whereby the ld. Single Judge has rejected O.A.No.220/2016 filed by the appellants. This chamber appeal was filed under Rule 4 of Chapter II of The Delhi High Court (Original Side) Rules, 1967 impugning an order dated 20th October, 2016 passed by the Joint Registrar (Judicial) dismissing an application under Order VIII Rule 1A (3) of the Code of Civil Procedure filed by the appellants/defendant nos.1 to 4 and 6.

2. It appears that the respondents herein filed CS(OS)No.486/2014, being a suit praying for a decree for recovery of a sum of Rs.3,79,06,333/- against the defendant no.1, an erstwhile employee of the plaintiff, and his wife as defendant no.2 and certain companies defendant nos.3 to 5, on the ground that these were the companies floated by the defendant nos.1 and 2 which had received payments from international clients of the plaintiff, of amounts actually payable to the plaintiff. Putting it simply, it was a case of the respondent herein that the defendant nos.1 and 2 had misappropriated amounts of the plaintiff which were claimed in the suit.

3. Issues were framed in the suit on 7th May, 2015 when it was also directed that the defendants would lead evidence first. After the evidence of the appellants herein was concluded, and at the stage when evidence of the plaintiffs were to commence, the defendant nos.1 to 4 and 6 filed I.A.No.9005/2016 under Order VIII Rule 1A (3) of the Code of Civil Procedure with a prayer to permit taking on record additional documents with liberty to the defendants to file additional evidence in support of the documents.

4. The explanation for filing the documents tendered by the appellants/defendants at that stage was that they had no recollection about the existence of such documents; that a criminal complaint stood filed by the plaintiff/respondent; that the Judicial Magistrate First Class, Bahadurgarh rejected a closure report filed by the police and took cognizance of the matter under Section 190(1)(b) of the Code of Criminal Procedure; that summons were issued to the defendant nos.1 and 2 by the criminal court; in these proceedings these defendants

received copies of certain documents.

5. The defendant no.1 thereafter extensively searched his old e-mail accounts and as a result of such search, most of the documents, which were sought to be brought on record by way of I.A.No.9005/2016, were discovered.

6. The appellants have urged that the documents were necessary and germane for just and proper adjudication of the matter. It is *inter alia* contended that these documents established the fact that payments which have been claimed in the suit, stood already received by the plaintiff company; that various payments claimed by the plaintiff in the suit from the defendants had actually been made to the plaintiff company; with regard to some of the claims, the appellants submit that the international buyers had raised issues regarding the quality of the product supplied by the plaintiff. Most of the documents sought to be brought on record were e-mails addressed to and from official e-mails of the employees of the plaintiff company.

7. One important factor which was pressed by the applicant was that Shri A.K. Mohanti, an employee and witness on behalf of the plaintiff company was confronted with the documents, when an objection was raised on behalf of the plaintiff that the documents had not emanated from or related to him.

8. This application was opposed on behalf of the plaintiff contending that the documents sought to be brought on record were completely irrelevant and that on 15th July, 2014; 8th September, 2014 and 7th May, 2015, the defendants had stated before the court that no more documents were required to be filed.

9. The Joint Registrar (Judicial) rejected I.A.No.9005/2016 noting that the FIR against the defendant nos.1 and 2 was registered on 9th April, 2013, prior to the filing of the suit on 19th February, 2014. Reference is also made to the order dated 2nd August, 2013 passed by the High Court of Punjab and Haryana, Chandigarh dismissing an interim bail application of the applicant which suggested that the defendants had knowledge of the documents after the criminal court took cognizance of 18th December, 2015, being incorrect. The order further held that some of the e-mails were already on record as having been filed by the plaintiff company.

10. The appellants had assailed the order passed by the Joint Registrar (Judicial) by way of O.A.No.220/2016. The same was rejected by the order dated 19th January, 2018. The present appeal has been filed assailing the order dated 9th April, 2013 and 19th January, 2018.

11. In order to balance equities and to do complete justice, we had called upon ld. counsel for the respondent/plaintiff to place before us a comparative chart of 35 documents which were sought to be brought on record by the defendants with the direction to the plaintiff to add a 4th column to the tabulation.

12. We have heard Mr. V. Shekhar, ld. Senior Counsel for the appellants and Mr. Manav Gupta, ld. counsel for the respondent at length. So far as the chronology of dates in the criminal proceedings are concerned, though the FIR was registered on 9th April, 2013 and the defendants had sought anticipatory bail which was rejected on 27th

August, 2013, however, it is a fact that the closure report filed by the police was rejected by the criminal court much later.

13. As per the procedure followed in a criminal trial, after the accused persons entered appearance upon receipt of summons, the documents relied upon by the prosecution are furnished to the accused persons. We are informed that in the present case, the documents were received in the criminal proceedings against the defendant nos.1 and 2, on 18th December, 2015. It has been contended that the defendant nos.1 and 2 effected searches with regard to the other connected e-mails and were able to trace them out in January, 2016 when the documents came into the hands of the appellants.

14. So far as the documents received from the criminal court is concerned, it could, at best, be contended that the appellants had delayed filing an application between December, 2015 till 29th July, 2016. So far as the documents which were searched and traced out between January, 2016 to May, 2016 are concerned, the delay would be of about two months, inclusive of the period when the court was closed for summer vacations.

15. We may note that neither the Joint Registrar (Judicial) by the order dated 20th October, 2016 nor the Id. Single Judge by the order dated 19th January, 2018 have at all considered the relevancy of any of the documents sought to be brought on record. The taking on record of the documents has been rejected simply on the ground of delay.

16. Four of the documents are already existing on the record of the Id. Single Judge. There would be no necessity for the appellants being required to produce them afresh. The same can be proved and taken

on record in accordance with law.

17. So far as the remaining documents are concerned, we are of the view that the Joint Registrar (Judicial) and the Id. Single Judge were required to also consider the aspect of relevancy of the documents and the prayer of the appellants for bringing the same on record should not have been rejected on the ground of delay. Even otherwise, we are of the view that in the chronology set out above, there was no such delay which merited rejection of the application at the outset for this reason.

18. In view of the above, the order dated 19th January, 2018 passed by the Id. Single Judge rejecting the O.A.No.220/2016 and the order dated 20th October, 2016 passed by the Joint Registrar (Judicial) rejecting I.A.No.9005/2016 are hereby set aside and quashed.

19. The parties shall appear before the Joint Registrar (Judicial) on 29th May, 2018 for fixing the date for consideration on I.A.No.9005/2016 afresh.

20. This appeal and application are disposed of in the above terms.

21. No costs.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

MAY 24, 2018

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