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

+ CM(M) 1008/2018 & CM APPL. 34945/2018  
M/S VIHAAN NETWORKS LIMITED ..... Petitioner

Through: Mr. Anshuman Gupta, Adv.

versus

KRISHNA KUMAR SIROHI ..... Respondent

Through: Mr. KVB Balakrishnan, Adv.

**CORAM:**

**HON'BLE MS. JUSTICE ANU MALHOTRA**

**ORDER**

**11.10.2018**

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Vide the present petition the petitioner assails the impugned order dated 08.08.2018 of the Court of the learned ADJ-05/PHC/New Delhi in CS No.57842/16 where an application under Order 8 Rule 1A r/w Section 151 of the Code of Civil Procedure, 1908 filed on behalf of the defendant to the said suit arrayed as the present petitioner, seeking to produce documents i.e. a copy of the attendance record of the plaintiff of the said suit Mr. Krishan Kumar Sirohi arrayed as respondent to the present petition and copy of the performance management policy, was declined and it was further observed vide the impugned order to the effect that additional documents that were sought to be brought on record after issues had been framed could be permitted only if the Court was satisfied that the documents either were not in possession of the party concerned or could not with due diligence be filed at an earlier stage. *Inter alia* it is observed through the impugned order that the matter relates to the year 2013 and it had not been stated in the

application as to why these documents were not filed earlier and that it was not the case of the defendant i.e. the present petitioner that the documents were not in their possession and not in their knowledge and compelling reasons for their non-production had not been put forth.

It has also been observed vide the impugned order that the application was filed in December, 2015 but was not pressed for a period of two years qua which it has been submitted on behalf of the present petitioner now that the same had not been pressed earlier as the aspect of jurisdiction under Order 7 Rule 10 of the Code of Civil Procedure, 1908 was still pending consideration at that time and it was only after the same had been considered and the matter was referred for recording of the evidence in the matter that the petitioner could take up the matter. The said application has vide the impugned order dated 08.08.2018 been dismissed with cost of Rs.20,000/- being directed to be deposited in the PMRF.

On behalf of the petitioner it has been submitted that the application had to be filed by the petitioner in view of the testimonies recorded in the case and reliance has been placed on the aspect that during the recording of the testimony of the witness PW-2 Mr. Nitin Jhain witness of the plaintiff of the said suit i.e. witness of the respondent herein, a query had been put to the effect that:

*“Q. Whether you have any evidence to prove your contention that the plaintiff was continuously working in the defendant company till 15<sup>th</sup> November, 2011?*

*Ans. My answer is above and the fact is that I have seen him attending the office.”*

which query had apparently been put on behalf of the defendant of the suit i.e. the present petitioner to controvert the plaintiff i.e. the present respondent as to whether he had any evidence to prove his contention that he was continuously working in the defendant company till 15.11.2011 qua which an answer was given by the witness that his answer was as above and that he had seen the plaintiff attending the office. The other submission made on behalf of the present petitioner is that a query had been put during the recording of the testimony of the plaintiff i.e. the present respondent which query and response read to the effect that:

*“Q. Have you filed any such management policy on record as stated by you?”*

*Ans. There is no written policy in this regard but it is a matter of practice which is follow.”*

which query is again put on behalf of the defendant i.e. the present petitioner to the plaintiff to question the plaintiff whether he had filed any management policy on record as stated by him to which the plaintiff had responded that there was no written policy in this regard but it is a matter of practice which was followed and apparently the said query and response qua testimony of the plaintiff recorded as PW-1 on the date 06.05.2015 before the Local Commissioner relates to a response to the preceding query which reads to the effect that:

*“Q. I put it to you that you have not filed any such continuous process of work assignment and appraisal for the relevant period of claim?”*

*Ans. As a practice of performance appraisal process in the*

*company, C- level executive which includes Chief Technology Officer were not asked to fill performance self appraisal form.”*

to which the plaintiff had responded that as a practice of performance appraisal process in the company, C- level executives which includes Chief Technology Officer were not asked to fill the performance self appraisal form, which is the said management policy which the defendant to the suit i.e. the present petitioner seeks to bring on record.

The plaint that had been filed by the plaintiff i.e. the respondent to the present petition against the petitioner herein arrayed as defendant to the said suit is one for recovery of Rs.99,76,244/- along with interest, *inter alia* seeking dues of his PLI entitlement in relation to which there is a tabulation of the said claims also. The suit is indicated to have been filed in the year 2013 as already observed by the learned trial Court.

Reliance is *inter alia* placed on behalf of the respondent on the verdict of the Hon’ble High Court of Rajasthan in ***Narayan Vs. Ram Sahai & Ors.***, a verdict dated 01.12.2015 in S.B. Civil Writ Petition No.10843/2015 to contend that the invocation of jurisdiction under Article 227 of the Constitution of India ought to be made in cases of jurisdictional error where there was a perversity or misdirection in law in the impugned order which would lead to manifest injustice to the aggrieved party and that in the facts and circumstances in the instance case there was no such requirement of invocation of any such exercise of power under Article 227 of the Constitution of India inasmuch as the impugned order has taken into account all requisite material before it. Observations have been made in the verdict in ***Narayan (Supra)*** by the Hon’ble High Court of Rajasthan *inter alia* to the

effect that if the powers under Order 8 Rule 1A (3) of the CPC were to be mechanically exercised the whole purpose and object of Order 8 Rule 1 of the CPC would be defeated and rendered otiose and the power under Order 8 Rule 1A is to be exercised only for good and sufficient cause such as when the documents sought to be relied upon by defendant in a suit were not in possession at the time of filing of written statement, had subsequently come to his possession and were also relevant for the adjudication of the dispute before the learned trial Court.

*Inter alia* reliance is placed on behalf of the respondent on the verdict of this Court in ***Shri Harkesh Singh & Anr. Vs. Shri Ved Raj in CM(M) 945/2007*** in relation to the invocation of powers under Order 7 Rule 14 of the CPC, 1908 as amended and also qua under Order 8 Rule 1A and under Order 8 Rule 1A (3) of the CPC wherein it has been observed to the effect that documents were necessarily to be filed by the defendants along with their written statement especially when it was not contended that they were not in their possession. Reliance is also placed on behalf of the respondent on the verdict of this Court in ***Gold Rock World Trade Ltd. Vs. Veejay Lakshmi Engineering Works Ltd. 143 (2007) DLT 113*** wherein it was observed to the effect that:

*“Consequently, before leave of the Court can be granted for receiving documents in evidence at a belated stage, the party seeking to produce the documents must satisfy the Court that the said documents were earlier not within the party’s knowledge or could not be produced at the appropriate time in spite of due diligence.”*

to contend that the circumstances of the instant case do not show that there

was only sufficient ground to grant the prayer made by the present petitioner inasmuch as the said documents now sought to be brought on record i.e. attendance sheet of the plaintiff and the management policy were well within the knowledge of the petitioner at the time of submission of the written statement itself especially in view of the averments made in the plaint.

On a consideration of the rival submissions and the factum that the suit has been instituted in the year 2013 itself and the defendant i.e. the present petitioner being in possession of all documents especially the attendance register as also the management policy on the basis of which all dues that were claimed by the plaintiff i.e. the respondent herein were well known to the defendant i.e. the petitioner herein, merely because there are queries that had been put by the defendant itself i.e. the present petitioner to the witness PW-2 of the plaintiff and to the plaintiff himself i.e. the respondent herein which have been responded in the manner that they had been responded as adverted to hereinabove do not *per se* suffice to grant the opportunity sought by the petitioner to bring on record documents well within the possession of the petitioner at the time of the submission of the written statement.

The petition and the accompanying application are declined.

**ANU MALHOTRA, J**

**OCTOBER 11, 2018**

**vm**