

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.360 OF 2019**

UTV Software Communications Ltd.,
& others,

... Petitioners

Versus

M/s. Murphy Enterprises

... Respondent

Mr. A. D. Bhobe, Mr. Raunaq Rao and Mr. B. Kumar, Advocates
for the Petitioners.

Mr. Sudin Usgaonkar, Senior Advocate with Ms. Tanvi Kamat
Ghanekar, Advocates for the Respondents.

Coram :- C. V. BHADANG, J.

Reserved for Order on : 10th July, 2019

Order Pronounced on : 12th July, 2019

ORAL ORDER

1. The challenge in this petition is to the order dated 08.01.2019, passed by the Commercial Court at Panaji in Special Civil Suit (Commercial) No.20/17 (Old Civil Suit No.49/2012). By the impugned order, an application, exhibit D-91, filed by the respondent for production of additional documents has been allowed.

2. The brief facts are that the respondent has filed the aforesaid suit against the petitioners for permanent injunction and other reliefs restraining the respondents from infringing its

Copyrights. The material case made out by the respondent is that the petitioners have re-produced and used the literary artistic works of 'Murphy' 'Murphy Radio' and 'Murphy Munna' in their film 'Barfi' which was yet to be released on the date on which the suit was filed. It is also contended that the petitioners have made the use of lyrics such as 'Murphy radio' and 'Murphy Munna' in their song 'Ala Barfi' in their movie. According to the respondent, this is in breach of their Copyrights.

3. The suit is resisted on behalf of the petitioners. It is denied that the respondent has any Copyright in the artistic work 'Murphy' 'Murphy Radio' and 'Murphy Munna' or there is any breach of Copyrights made, in the movie 'Barfi'.

4. The learned Trial Court, on the basis of the rival pleadings, framed as many as 10 issues. On 12.10.2016, the respondent filed affidavit in evidence of its first witness (Pw.1).

5. On coming into force of the Commercial Courts Act 2015 (Act, for short), the suit came to be transferred to the Commercial Court somewhere in the year 2017. The chief examination of Pw.1 commenced on 27.06.2017 and the chief examination is not yet concluded.

6. It is at this stage that on 21.07.2018, the respondent filed an application, exhibit D-91, for production of the following documents :

(i) Agreement assignment dated 25.03.1997

(ii) Letter dated 25.03.1996 from CEAT Limited;

(iii) Letter dated 01.08.2002 from CEAT Limited.

7. It was contended that there are voluminous documents filed at the time of the filing of the suit and as such due to oversight, the aforesaid documents remained to be produced. It was contended that while going through the records and while exhibiting the documents during the chief examination of Pw.1, that it was realised that the aforesaid documents which were material were not produced. It was further contended that at serial no.46 of the list of documents, the respondent has relied upon the photographs taken from a compact disc (CD) of the movie 'Barfi' and in order to "make it handy", the respondent has developed the photograph wherein the trademark and the Copyright has been violated and wishes to produce a fresh photograph copy on record "to maintain the sequence of events in the said movie."

8. The application was opposed by the petitioners on the ground that the belated production of the documents is not permissible as the trial has commenced. It was contended that the documents now sought to be produced were well within the possession and power of the respondent, since prior to the institution of the suit and the production at this stage is not permissible in view of Order XIII Rule 1 of the Civil Procedure Code (CPC, for short). It was contended that the case made out by the respondent for non-production of the documents out of oversight is not a ground to allow such production.

9. The learned Trial Court by the impugned order has allowed the production on the ground that although evidence has commenced, the respondent/plaintiff has not closed its case. The Trial Court has found that under Order XI of CPC, the Court can grant leave to the plaintiff to produce such documents upon the plaintiff establishing reasonable cause for their 'non-disclosure' earlier.

10. I have heard Mr. Bhole, the learned Counsel for the petitioners and Mr. Sudin Usgaonkar, the learned Senior Counsel for the respondent. Perused record.

11. Mr. Bhole, the learned Counsel for the petitioner has submitted that under Order XI Rule 1(5) of CPC, the Commercial Court cannot allow the plaintiff to rely on documents which were in his or its possession, power, control or custody and not disclosed along with the plaint. It is submitted that the documents now sought to be produced were within the possession and control of the respondent and there is no reasonable cause shown for their non-production earlier. The learned Counsel has pointed out that by virtue of Order XI Rule 7 of CPC, the provisions of Order VII Rule 14 of CPC are not applicable to a Commercial Court. It is submitted that the only reason shown for non-production is 'inadvertence', on the part of the respondent, which cannot be said to be a reasonable cause as there is a delay of over six years in production of the documents that too at the stage when the witness of the respondent has entered into the witness box. On behalf of the petitioners, reliance is placed on the decision of the Delhi High Court in the case of **Polyflor Limited vs Sh. A.N. Goenka & Ors. 2016, SCC Online Del 2333** and **Nitin Gupta vs. Texmaco Infrastructure & Holding Ltd., 2019 SCC Online Del 8367** and the decision of the Supreme Court in the case of **N. C. Bansal vs Uttar Pradesh Financial Corporation & anr. (2018) 2 SCC 347**. It is submitted that the Trial Court was in error in allowing the

production at a belated stage, that too in breach of the provisions of Order XI Rule 1(5) of CPC which is applicable to the Commercial Courts.

12. Mr Usgaonkar, the learned Senior Counsel for the respondent has supported the impugned order. It is submitted that under Section 8 of the Act, there is a bar against any revision application or a petition being filed or entertained against a interlocutory order passed by the Commercial Court and the remedy, if any, of a party aggrieved by such an order is to challenge the same in an appeal under Section 13 of the Act against the final decree of the Commercial Court.

13. On merits it is submitted that the suit was not filed as a Commercial Suit. The suit was filed in the year 2012 and was transferred to the Commercial Court in the year 2017 after the Act came into force on 23.10.2015 and the consequent constitution of the Commercial Courts. It is submitted that therefore the rigour of Order XI Rule 1 cannot be applied to the suit. The learned Senior Counsel has pointed out that the provisions of Order VII Rule 14 of CPC were applicable to the suit when it was originally filed and the subsequent repeal of the said provision by the Act, will be inconsequential. The learned Senior Counsel submitted that even under Order XI

Rule 1(5) of CPC, there is no total prohibition in allowing production of documents at a subsequent stage and the Court can grant such production if a reasonable cause for their non-production earlier is shown. It is submitted that the learned Trial Court in its discretion has found that there is sufficient/reasonable cause shown and has allowed the production and the discretion so exercised and the Order passed is not amenable to challenge in the supervisory jurisdiction of this Court, particularly when the impugned order does not result into any manifest injustice or prejudice to the petitioners. The learned Senior Counsel has pointed out that the documents are relevant to show the flow of the Copyright of the respondent which has been infringed by the petitioners. It is thus submitted that the documents are relevant. The learned Senior Counsel has placed reliance on the decision of this Court in the case of **Vitorino Rodrigues & Ors. vs. Smt. Nirmalabai Shivajirao Dessai (deceased) & Ors 2010(6) ALL MR 208, Chitrakala Fal Dessai vs. Balu Maratha @ Mane 2006(6) Mh LJ 427, Ramnath Nandlal Dhoot & Co. & anr. vs. B. R. Shroti & Ors. AIR 1980 Bombay 387 and United India Insurance Co. Pvt. Ltd. vs. M/s. Madgavkar Salvage & Towage Co. Pvt. Ltd. 1995(1) Goa L.T. 1.**

14. Mr. Bhole, the learned Counsel for the petitioners, in rejoinder has placed reliance on the decision of the Gujarat High Court in the case of **State of Gujarat vs. Union of India MANU/GJ/0870/2018**, in order to submit that notwithstanding Section 8 of the Act, this Court can exercise supervisory jurisdiction under Article 227 of the Constitution of India in an appropriate case where there is a jurisdictional error committed by the Court below.

15. I have carefully considered the rival circumstances and the submissions made.

16. Section 8 of the Act reads thus :

“Bar against revision application or petition against an interlocutory order.- Notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, and any such challenge, subject to the provisions of Section 13, shall be raised only in an appeal against the decree of the Commercial Court.”

17. It can thus be seen that Section 8 of the Act bars any Civil Revision Application or a petition being entertained against any interlocutory order of a Commercial Court

including an order on the issue of jurisdiction and a party aggrieved can challenge any such order in an appeal under Section 13 against the final decree of the Commercial Court.

18. There cannot be any manner of dispute that Section 8 does not and cannot bar the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. However, while exercising such jurisdiction, the well established principles and the object for which such jurisdiction can be exercised, have to be kept in mind. At the same time, the object of the Act in ensuring that the trial in suits before the Commercial Courts is not held up or interdicted on account of such challenge to interlocutory orders being entertained has also to be kept in mind. Thus, although the existence of the supervisory jurisdiction cannot be doubted, the question is about its exercise, which would inevitably depend upon the facts and circumstances of each case.

19. Coming to the present case, the suit was filed in the year 2012 i.e. prior to the coming into force of the Commercial Courts Act. The suit was transferred to the Commercial Court in the year 2017. Order XI of CPC which pertains to discovery, disclosure and inspection of document was amended by the Commercial Courts Act. Order XI Rule 1 and 5 of CPC to the

extent relevant for the purpose and on which strong reliance is placed on behalf of the petitioners, reads thus :

"1. Disclosure and discovery of documents.-

(1) Plaintiff shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, alongwith the plaint, including:-

(a) documents referred to and relied on by the plaintiff in the plaint;

(b) documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the plaint, irrespective of whether the same is in support of or adverse to the plaintiff's case;

(c) nothing in this Rule shall apply to documents produced by plaintiffs and relevant only-

(i) for the cross-examination of the defendant's witnesses, or

(ii) in answer to any case set up by the defendant subsequent to the filing of the plaint, or

(ii) handed over to a witness merely to refresh his memory.

(2) ...

(3) ...

(4) ...

(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 alongwith 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 alongwith the plaint."

It can thus be seen that under Order XI Rule 1 of CPC, the plaintiff is obliged to file a list of all documents and photo copies of all documents in his or its power, possession and custody pertaining to the suit along with the plaint. This requirement obviously cannot be made applicable to the present suit with the same rigour as it was filed much prior to the coming into force of the Act. Even assuming that order XI Rule 1 of CPC applies, sub-Rule (1)(5) of Order XI of CPC would indicate that the plaintiff in an appropriate case can be allowed to rely on documents which were in his power, possession, control or custody but not disclosed along with the plaint, subject to the leave of the Court, which can be granted if the plaintiff establishes "reasonable cause" for their non-disclosure along with the plaint. The question is whether the respondent has shown a reasonable cause in this case. The Trial Court has accepted the cause shown which, according to

the respondent, is pure inadvertence and oversight and, in my considered view, exercise of such discretion, unless it is found to be patently illegal and resulting into manifest injustice is not amenable to challenge in the supervisory jurisdiction of this Court. It is not necessary to dwell as to whether in every case such inadvertence or oversight would constitute sufficient cause as the matter would depend upon facts and circumstances of each case.

20. In the present case, as pointed out by learned Senior Counsel for the respondent, the documents are sought to be produced in order to show the flow of Copyright from CEAT to the respondent.

21. A brief reference, at this stage, may be made to the cases cited by the petitioners. In the case of **Polyfor Limited** (supra), the suit was filed in the year 2004 seeking permanent injunction in respect of passing off action and unfair trade practice and for rendition of accounts. The documents which were sought to be produced were to substantiate the sales, figures and turnover of the plaintiffs under the trademark POLYFOR from the year 1997 to 2013. One of the reasons for refusal to produce such production was that the documents pertaining to 2005 afterwards i.e. after filing of the suit, were

found to be not relevant. In my considered view, the said case turned on its own facts.

22. In the case of **Nitin Gupta** (supra) the production of the additional documents was sought after framing of the issues. The said case turned on its own facts, where the suit was instituted after the coming into force of the Commercial Courts Act and therefore the rigour of Order XI Rule 1 of CPC would apply from inception.

23. In the case of **N.C. Bansal** (supra), the suit was initially dismissed on the point of maintainability. The First Appellate Court restored the suit and after restoration of the suit, the appellant-plaintiff had filed an application for amendment of the plaint under Order VI Rule 17 of CPC and for production of documents under Order VII Rule 14 of CPC. Both these applications were dismissed which order was confirmed by the High Court and the matter went to the Supreme Court. The Supreme Court found that when the suit was still at initial stage, the amendment and the production of document ought to have been allowed. It is significant to note that this was after remand by the First Appellate Court. It is thus difficult to see as to how the decision in the case of **N.C. Bansal** (supra) can come to the aid of the petitioners.

24. Coming to the present case, although the witness for the respondent has entered into the witness box, it transpired that his chief examination is yet to conclude and, therefore, I do not see any manifest injustice or prejudice being caused to the petitioners by production of documents being allowed. It is well settled that the exercise of the supervisory jurisdiction under Article 227 of the Constitution of India, is only to ensure that the sub-ordinate Courts act within the bounds of their authority and jurisdiction and the orders passed do not result into manifest injustice (See the case of **Shalini Shyam Shetty & Anr vs Rajendra Shankar Patil 2010 8 SCC 329**).

25. The petition is without any merit and is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

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