

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5399 OF 2019

Sandvik Asia Private Limited	...	Petitioner
Vs.		
M/s. Tarini Steel Co. Ltd.	...	Respondent

Mr. Shrinivas Deshmukh a/w. Ms Pratiksha Avhad i/b. Mulla and Mulla
& Craigie Blunt & Caroe for Petitioner.
Ms Koshiki i/b. Vidhi Partners for Respondent.

CORAM : UJJAL BHUYAN, J.
DATE : NOVEMBER 04, 2019

P.C. :

Heard Mr. Deshmukh, learned counsel for the petitioner and Ms Koshiki, learned counsel for the respondent.

2. This Petition has been filed under Article 227 of the Constitution of India for quashing of order dated 25.03.2019 passed by the Commercial Court, Pune under Exhibits-64 and 65 in Commercial Suit No.135 of 2016.

3. Petitioner is the defendant in the said Suit which has been instituted by the respondent as the plaintiff for specific performance of contract and for damages. By the impugned order, learned Court below had allowed the plaintiff to produce 3 more documents after cross-examination of plaintiff's witness No.1.

4. Learned counsel for the petitioner has referred to statements of the plaintiff dated 28.01.2019 under Exhibit E-1 to contend that petitioner had disclosed before the Court below that it had produced all the documents in its power and custody and therefore, it did not want to produce any other documents. After plaintiff filed the evidence in chief of P.W.1, who was duly cross-examined by the defendant (petitioner

herein), an application was filed on behalf of the plaintiff seeking leave to file the following documents:

- i. e-mails exchanged between plaintiff and defendant;
- ii. loan sanction document; and
- iii. report of the Chartered Accountant.

5. By a cryptic endorsement dated 25.03.2019, learned Court below allowed production of the above documents.

6. Aggrieved, present Petition has been filed.

7. Learned counsel for the petitioner has referred to the amended Order XI Rule 1 of the Code of Civil Procedure, 1908 in so far it is applicable to commercial disputes and contends that as per sub-rule (5) thereof, 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 the plaint or within the extended period and except by leave of Court but such leave shall be granted only if the plaintiff satisfies the Court that there was reasonable cause for non-disclosure of such documents along with the plaint. He submits that from the application, no such cause is discernible and learned Court below also mechanically made an endorsement on 25.03.2019 allowing production which is not in conformity with the provisions of law as indicated above.

8. Learned counsel for the respondent (plaintiff) submits that no error has been committed by the learned Court below in permitting plaintiff to adduce additional documents. She further submits that it is always open to the Court to recall a witness to enable further cross-examination of that witness by the defendant in the context of the additional documents filed.

8.1 Submissions made have been considered.

9. It is seen that notice in this case was issued on 10.07.2019 and on 26.09.2019, Court noted that service was complete.

10. After hearing learned counsel for the parties and on due consideration, Court is of the view that though learned Court below ought to have given reasons for allowing production of additional documents by the plaintiff in terms of amended provision of Order XI Rule 1(5) of the Civil Procedure Code as applicable to commercial disputes, nonetheless, it may not be justified to interfere with a pending proceeding at the interlocutory stage that too in a commercial dispute. Since learned Court below has permitted the plaintiff to produce 3 additional documents, it would be in the interest of justice to permit the defendant to cross-examine P.W.1 only in respect of those 3 additional documents and thereafter to proceed with adjudication of the commercial dispute.

11. With the above direction and observation, this Petition is disposed of.

(UJJAL BHUYAN, J.)

Minal Parab