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

+ **FAO(OS) (COMM) 138/2019**

M/S JAEKO SPARES PVT LTD & ORS Appellants

Through: **Mr. Rajiv Bahl, Advocate**

versus

HERO MOTOCORP LIMITED Respondent

Through: **Ms. Sangeeta Sondhi, Advocate**

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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26.11.2019

1. The appellants/defendants are aggrieved by an order dated 25.02.2019, passed by the learned Single Judge allowing an application (I.A. No.7530/2018) filed by the respondent/plaintiff under Order XI, Rule 1 (5) & (6) read with Section 151 of the CPC praying *inter alia* for permission to file additional documents.

2. Before examining the submissions made by learned counsel for the appellants/defendants, we may refer to the sequence of dates and events and the relevant provisions of the Code of Civil Procedure applicable in the instant case.

3. On 19.04.2017, the respondent/plaintiff had instituted a suit for recovery of a sum of Rs.10,65,68,006/- against the appellants/defendants towards sale of spare parts. There arising a commercial dispute between the parties, the provisions of Order XI Rule (1) (1) of the CPC required the

respondent/plaintiff to file alongwith the plaint, a list of all the documents and photocopies of the documents in its power and possession, control or custody, pertaining to the suit. Order XI Rule (1)(2) of the CPC prescribes that the list of documents filed with the plaint must specify whether the said documents in the power and possession, control or custody of the plaintiff, are originals, office copies or photocopies.

4. Order XI Rule (1) (3) of the CPC postulates that a plaint must contain a declaration on oath from the plaintiff that all the documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by him, have been disclosed and copies thereof annexed with the plaint and further, that the plaintiff does not have any other documents in his power, possession, control or custody. The said declaration on oath is required to be filed in the shape of a Statement of Truth, as per the format prescribed in the Appendix.

5. Order XI Rule (1) (4) states that only in the case of an urgent filing, is the plaintiff permitted to seek the leave of the court to rely on additional documents, as a part of the declaration on oath and subject to his being granted such leave, the plaintiff is permitted to file such additional documents in court within 30 days from the date of filing the suit alongwith a declaration that he does not have any other document in his power, possession, control and custody.

6. Order XI Rule (1) (5) of the CPC goes on to clarify that the plaintiff shall not be allowed to rely on any documents that were in his power, possession, control and custody but not disclose alongwith the plaint or

within the extended period set out above, except by the leave of court and further, that the court would grant leave only upon the plaintiff establishing a reasonable cause for non-disclosure of the documents alongwith the plaint.

7. In the present case, the respondent/plaintiff filed an application for seeking permission to file additional documents. An authorized officer of the respondent/plaintiff filed the Statement of Truth dated 19.04.2017, stating *inter alia* as follows: -

“I say that all documents in the power, possession, control or custody of the Plaintiff, pertaining to the facts and circumstances of the proceedings to the facts and circumstances of the proceedings initiated by the plaintiff have been disclosed and copies thereof annexed with the Plaint, and that the Plaintiff does not have any other document in its power, possession, control and custody.”

8. The Statement of Truth mentioned that the plaint comprised of a total of 521 pages. It is not in dispute that the respondent/plaintiff did not file an application under Order XI Rule (1) (5) of the CPC, for seeking extension of time by 30 days to file the additional documents. Such an application came to be filed by the respondent/plaintiff after one month, on 25.05.2018 and that too, without any documents enclosed therewith. Documents running into 2824 invoices were filed by the respondent/plaintiff only on 27.06.2018. Nine months before that, the appellant/defendant had already filed its written statement on 27.09.2017 and the respondent/plaintiff had filed the replication on 03.01.2018. Issues had also been framed on 15.01.2018 and on the said date, the parties were directed to file their affidavits by way of evidence within six weeks reckoned therefrom i.e. on or before 26.02.2018.

We have been informed that the Local Commissioner has already been appointed by the learned Single Judge for recording the evidence of the parties, which is likely to commence very soon.

9. In the meantime, on an application moved by the respondent/plaintiff under Order XI Rule 1 (5) & (6) of the CPC, on 25.05.2018, the impugned order has been passed by the learned Single Judge allowing the same subject to payment of costs of Rs.10,000/- to the other side. What had weighed with the learned Single Judge for passing the impugned order is that the respondent/plaintiff had already filed a Statement of Account earlier on and it was proposing to file a second copy of the invoices, originals whereof were in its power and possession.

10. Mr. Bahl, learned counsel for the appellants/defendants submits that the impugned order runs contrary to the spirit of the provisions of Order XI of the CPC, that has been inserted in the Code by a special amendment introduced on 03.05.2018. The amended provision applies to any suit raising a commercial dispute of a specified value. He submits that the impugned order is erroneous for the reason that admittedly the documents in question were in the possession of the respondent/plaintiff all along, which is apparent from a perusal of the averments made in para 7 of the application moved by it wherein it has been categorically averred that “*the invoices relied upon were duly reflected in the Statement of Account, but took time to be sorted out from invoices pertaining to other dealerships*” and therefore, could not be placed before the court at the time of instituting the suit. It has been further averred in para 8 of the application that “*collating the invoices was cumbersome and unwieldy operation and put a lot of pressure on a*

minimum number of personnel and equipment that was being taxed to the maximum.”

11. The tone and tenor of the averments made in the captioned application filed by the respondent/plaintiff belies the stand sought to be taken by it now that it is entitled to invoke the provisions of Order XI Rule 1 (4) & (5) of the CPC, for the following reasons: -

- (i) Admittedly, the period of limitation was not expiring on 19.04.2017, the date when the suit was instituted for the respondent/plaintiff to have been in such a rush and thus not in a position to file the voluminous documents;
- (ii) This is not a case of urgent filing, where the respondent/plaintiff could seek leave to rely on additional documents and invoke the discretion of the court by asking for an additional period of 30 days to file the documents alongwith the declaration on oath.
- (iii) At the time of instituting the suit, the respondent/plaintiff was required to file a Statement of Truth, which it did and it was clearly stated *inter alia* that all the documents in its power, possession, control and custody pertaining to the facts and circumstances of the proceedings had been disclosed and the copies had been annexed with the plaint. Further, the Statement of Truth records that the respondent/plaintiff did not have any other document in its power, possession, control and custody.
- (iv) Had it been a case where due to the sheer volume of the documents, the respondent/plaintiff had found it to be unwieldy and impractical to file all the relevant documents, then it had an opportunity to explain the

reasons for not being in a position to file the documents by invoking the discretion of the court at the time of filing the Statement of Truth as provided under Order XI Rule (5). But no such step was taken.

12. It transpires from the sequence of events already narrated above that pleadings in the suit were completed on 03.01.2018 and thereafter, issues were framed on 15.01.2018. However, in all this duration, the respondent/plaintiff did not take any steps to file the voluminous documents. Instead, it did so only at the end of May, 2018 and even at the time of filing the application (I.A. No. 7530/2018), yet again, none of the documents referred to and relied upon therein, were filed by the respondent/plaintiff.

13. In the course of our dictating the present order, Ms. Sondhi, learned counsel for the respondent/plaintiff states that the documents in question were not filed later on 27.06.2018, as is being urged by the other side, but were filed alongwith the application on 25.05.2018.

14. Even if we accept the submission made by learned counsel for the respondent/plaintiff that the documents, namely 2824 invoices were filed alongwith the application moved under Order XI Rule 1 (5) & (6) of the CPC, it would not take the case of the respondent/plaintiff any further when no explanation has been offered in the said application for the non-filing of the said documents for a period spanning over 13 months, reckoned from the date of institution of the suit, during which period, pleadings in the suit had been completed and issues had already been framed by the court.

15. We may emphasise here that the entire purpose of introducing the amended Order XI in the Code is to make sure that commercial disputes of a

specified value are fast-tracked and the said suits are decided as expeditiously as is possible. It is with this object of cutting down the delay and avoiding procrastination by either side that the Legislature has taken the pains to spell out every step of the process of disclosure, discovery and inspection of documents in a commercial suit to the point that even in circumstances where a plaintiff sets out the details of the documents, which a plaintiff believes to be in the power, possession, control and custody of the defendant and he wishes to rely upon the said documents, he is required to furnish the details of the said documents and only thereafter, seek leave from the court for the production of the said documents by the defendant. Thus, the timelines set in the Code for disclosure, discovery and inspection of documents in a suit raising a commercial dispute are mandatory in nature and not directory and the consequences of non-filing are grave.

16. In the instant case, if it is the stand of the respondent/plaintiff that the originals of the invoices in question were in the power and possession of the appellants/defendants, then there was no reason for it not to have invoked the provisions of Order XI Rule 6 of the CPC by giving the details of the said documents at the time of instituting the suit and stating in clear terms in the Statement of Truth required to be filed with the plaint that the originals of the said documents were in the power and possession of the appellants/defendants, who could then have been called upon to produce the same at the relevant stage. The respondent/plaintiff having elected to raise a commercial dispute against the respondent has miserably failed to comply with the requirements of law that ought to be construed strictly. Having failed to adhere to the timelines prescribed under Order XI of the Code, that

require strict enforcement, the court cannot come to its aid by tinkering with the said timeline.

17. In the aforesaid facts and circumstances of the case, we are unable to sustain the order dated 25.02.2019. However wide the scope of discretion may be for the court to overcome procedural delays, the present case is not one where discretion ought to be exercised in favour of the respondent/plaintiff when the records reveal that it has not been diligent or prompt in taking timely steps for disclosure and discovery of documents as mandated in law. This is not a case where a private individual is the plaintiff before the court. Rather, it is a case where the respondent/plaintiff is a public limited company, which has all the wherewithal at its command, including a full-fledged legal department, adequate manpower, resources, etc., for it to have taken prompt steps by filing the relevant documents alongwith the plaint at the right stage.

18. In view of the aforesaid facts and circumstances, the impugned order dated 25.02.2019, is quashed and set aside. Permission is refused to the respondent/plaintiff to file the additional documents referred to in I.A. No.7530/2018, which is dismissed as meritless. The appeal is allowed and disposed of with no orders as to costs.

HIMA KOHLI, J

ASHA MENON, J

NOVEMBER 26, 2019
s/pkb