

01.12.2020
Item No.08
(P.J & S.M)
Ct. No. 05

(Via Video Conference)

C.O. 1282 of 2020

**TDI International Private Limited
Vs.
Airports Authority of India**

Mr. Surajit Nath Mitra,
Mr. Soumya Roy Chowdhury,
Mr. Amrita Pandey,
Mr. Anamika Pandey,
... for the petitioner.

Mr. Ayan Poddar,
Ms. Moumi Yasmin,
... for the Opposite Party

The subject matter of challenge in this revisional application, at the instance of the sole defendant in the order dated February 22/10, 2020 passed by the learned Judge, Commercial Court at Rajharhat, 24 Parganas (North) in [Money Suit No. 5 of 2019(C/C (hereinafter referred to as “the suit”)

The original Money Suit, being MS 28 of 2018 was filed by the plaintiff/opposite party, against the present petitioner, before the learned Civil Judge (Senior Division) 2nd Court at Barasat. After the commercial Court’s Act, 2015 (hereinafter referred to as “the Act of 2015”) came into force, the said suit stood transferred before the learned Commercial Court at Rajarhat, being the learned Court below.

After the suit stood transferred to the learned Court below, the plaintiff-opposite party filed an application for disclosure of further documents which were not produced at the time of filing of the suit. In the said application the plaintiff-opposite party alleged certain grounds for which it could not disclose the said documents at the time of filing of the suit. By the impugned order, the learned Court below allowed the said application of the plaintiff-opposite party.

According to the petitioner, in view of the amended provisions of Order X1 Rule 1(5) of the Code, the learned Court below could allow the application of the plaintiff-opposite party for disclosure of new documents only upon being satisfied that the plaintiff has established reasonable cause for non-disclosure of such documents along with the plaint and not otherwise. The defendant-petitioner contends that by the impugned order the learned Court below has allowed the plaintiff-opposite party to disclose new documents, without coming to a conclusion that it established reasonable cause for non-disclosure of the said documents along with the plaint. Learned Senior Counsel for the petitioner contends that in view of the mandatory condition under Order X1 Rule 1(5) of the Code, in the absence of any finding that the plaintiff-opposite party have established reasonable cause for

non-disclosure of the said documents along with the plaint, the learned Court below committed a patent illegality in allowing the plaintiff's application by making a sweeping observation that the documents sought to be produced by the plaintiff are relevant and necessary documents to adjudicate the dispute in a just and proper manner cannot be sustained. In the present case, in the absence of any finding that the plaintiff-opposite party has established reasonable cause for non-disclosure of the said documents along with the plaint, the learned Court below committed a patent illegality in allowing the plaintiff's application by making a sweeping observation. It is further pointed out that the averments made by the plaintiff in the second paragraph of the said application has not even been properly affirmed. The defendant-petitioner prays for setting aside of the impugned order.

The plaintiff-opposite party, however, submits that in the present case the original suit was filed before the learned Civil Judge (Senior Division), 2nd Court at Barasat and subsequently, after the Act of 2015 came into force, the suit was required to be transferred to the learned Court below only. In such a transferred suit the amended provisions of Order XI Rule 1(5) of the Code cannot be made applicable and as such, this Court should not interfere with the

impugned order. According to the plaintiff-opposite party, assuming but not admitting that the amended provisions of Order XI Rule 1(5) of the Code can be made applicable to a suit transferred to the Commercial Court in that event also a perusal of the impugned order shows that the learned Court below was satisfied with the explanation given by the plaintiff-opposite party for non-disclosure of the relevant documents at the time of filing of the suit. Learned counsel appearing for the plaintiff-opposite party further submits that the learned Court below has not committed any illegality in passing the impugned order and this Court will be pleased not to entertain the present revisional application.

I have considered the materials on record as well as the arguments advanced by the learned counsel appearing for the respective parties.

The application filed by the plaintiff before the learned Court below appears to have been treated to be one under Order XI Rule 1(5) of the Code of Civil Procedure (in short “the Code”). The short point that has fallen for consideration of this Court in this revisional application pertains to the scope and effect of provisions of Order XI Rule 1(5) of the Code.

Thus, it would be appropriate to consider Order XI Rule 1(5) of the Code (as amended) which is extracted below:-

“Disclosure and Discovery of Documents”

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“(5) The plaintiff shall not be allowed to rely on document which were in the plaintiff’s power, possession, control or custody and not disclosed along with 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 along with the plaint.”

As mentioned earlier, the learned Court below has passed the impugned order after considering the plaintiff’s-opposite party’s application for disclosing any document to be one under Order XI Rule 1(5) of the Code. The learned Court below has not, however, decided whether the said amended provisions are at all applicable in the present case.

From a bare reading of the said amended provision it is evident that a Court can allow a plaintiff to rely on documents, which were his/her power, possession, control and custody but were not disclosed along with the plaint, only upon being satisfied that the plaintiff have established the reasonable cause for non-disclosure of such documents along with the plaint. This appears to be

mandatory condition for entertaining any application under Order XI Rule 1(5) of the Code. However, from a reading of the impugned order it is evident that there is no finding of the learned Court below accepting the explanation of the plaintiff-opposite party to substantiate any reasonable cause for non-disclosure of such documents along with the plaint. Accordingly, I am unable to sustain the impugned order dated February 10, 2020 passed by the Learned Judge, Commercial Court at Rajarhat, North 24 Parganas in Money Suit No. 05 of 2019(C/C) and the same stands set aside.

The learned Court below is directed to rehear the application filed by the plaintiff-opposite party for disclosure of certain documents, and decide the same with a reasoned order.

The plaintiff-opposite party may file a supplementary affidavit before the learned Court below for removing the defect in the verification part of its application. Such supplementary affidavit should be filed within December 11, 2020.

The defendant-petitioner may file its counter-affidavit, if any, within December 18, 2020.

The learned Court below is requested to decide the plaintiff's application afresh expeditiously, preferably within the month of January 2021.

Needless to mention, parties will be at liberty to argue of their respective point before the learned Court below.

With the above directions, the revisional application C.O. 1282 of 2020 stands disposed of.

There shall, however, be no order as to costs.

(Ashis Kumar Chakraborty, J.)