

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

% **Date of decision: 15th December, 2021.**

+ **CM(M) 1162/2021**

**M/S TELECOMMUNICATIONS CONSULTANTS
INDIA LTD & ANR. Petitioners**

Through: Mr. Nikhilesh Krishnan, Advocate.

Versus

SH. ANIL BHASIN & ANR. Respondents

Through: Mr. Asheesh Jain, Mr. Ankur Bhasin,
Mr. Milan Deep Singh, Advocates
along with Mr. Anil Bhasin,
Advocate.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

CM No. 45328/2021(for exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

CAV 94/2021 & CAV 95/2021

3. Since counsel for the caveator/respondent no.1 enters appearance, caveat stands discharged.

CM(M) 1162/2021 & CM No. 45327/2021(for stay)

4. The present petition under Article 227 of the Constitution of India impugns orders passed by the Additional District Judge-01, South, Saket Courts, New Delhi (hereinafter 'Commercial Court') in a commercial suit

bearing CS(COMM) No.401/2019, being (i) order dated 28th September, 2021, whereby the application filed on behalf of the respondent no. 1 (plaintiff in the suit) to bring original documents on record has been allowed subject to payment of cumulative costs of Rs.20,000/-; and (ii) order dated 16th November, 2021, whereby the said documents have been allowed to be exhibited by the Court.

5. Brief facts leading to the filing of the present petition are given hereinafter:

(i) The commercial suit for recovery of Rs.18,23,992/- with *pendente lite* and future interest was filed by the respondent no.1 in April, 2009 in respect of work orders awarded to the respondent no.1 by the petitioners (defendants no.1 and 2 in the suit) and alleging withholding of certain amounts by the petitioners.

(ii) Upon filing of written statement by the petitioners and respondent no.2/MTNL (defendant no.3 in the suit), issues were framed in the suit on 14th May, 2016.

(iii) The evidence of the respondent no.1 was closed in this case on 11th September, 2019.

(iv) An application under Order XI Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC) for discovery of documents from respondent no.2/MTNL was filed by the respondent no.1 on 14th October, 2019.

(v) On 19th October, 2019, evidence of petitioners was closed.

(vi) On 31st March, 2021 the application filed by the respondent no.1 under Order XI Rules 1 and 2 of the CPC was dismissed as not pressed and on the same date, a fresh application was filed seeking production of certain original documents from respondent no.2/MTNL. The said application was

opposed by the petitioners as well as respondent no. 2/MTNL by filing a reply.

6. The impugned order dated 28th September, 2021, while allowing the aforesaid application filed on behalf of respondent no.1, has observed that (i) the documents sought to be brought on record was put to the witness of the petitioners who refused to answer the questions put forth by the respondent no.1 on the ground that the documents were photocopies. Hence, the respondent no. 1 had no option but to produce the originals of the said documents; (ii) the documents are essential for proper adjudication of the case; (iii) production of the documents would not prejudice the petitioners and the respondent no.2/MTNL and would cut short the controversy between the parties; and (iv) both petitioners as well as respondent no. 2/MTNL have been compensated by way of costs of Rs.10,000/- each.

7. Vide impugned order dated 16th November, 2021, the witnesses of respondent no. 2/MTNL, being PW2 and PW3, were examined in chief, the certified copies of the documents brought by them were exhibited and the matter was deferred for cross examination of the said witnesses.

8. The counsel appearing for the petitioners has contended that (i) the respondent no.1 closed their evidence without reserving any right to lead rebuttal evidence; (ii) no liberty was taken by the respondent no.1 even after the petitioners' evidence, for leading rebuttal evidence; (iii) application under Order XI Rules 1 and 2 of the CPC filed by the respondent no.1 for discovery of documents from respondent no.2/MTNL was dismissed as not pressed; (iv) the documents now exhibited were beyond the documents that were sought to be produced in terms of the subsequent application filed for summoning of documents from respondent no.2/MTNL; and (v) if the onus

is on the plaintiff to prove a certain document, evidence in rebuttal cannot be lead after the defendant's evidence is over. Reliance in this regard is placed on the judgment of this Court in *Hemant Kumar Singhal Vs. Indian Overseas Bank & Anr.* 2020 (267) DLT 639.

9. Mr. Asheesh Jain, counsel appearing on behalf of the respondent no.1 on advance notice submits that (i) the need to summon the originals of the aforesaid documents arose as the petitioners in their written statement denied the said documents and when the photocopies of the said documents were confronted to the witness of the petitioners in the course of cross examination, the witness did not comment on the documents on the ground that they were photocopies; (ii) the said documents are admittedly documents of the petitioners which were sent by them to respondent no.2/MTNL; (iii) the said documents were obtained by the respondent no. 1 through an RTI application from respondent no.2/MTNL; (iv) since the said documents were obtained through RTI, the earlier application filed under Order XI Rules 1 and 2 of the CPC was withdrawn; and (v) the additional documents referred to by the counsel for the petitioners were part of the rejoinder to the reply filed by the petitioner to the said application, and the same has not been filed by the petitioners along with the present petition.

10. I have heard the counsels for the parties and gone through the record of the case.

11. In my view, there is no infirmity in the impugned order passed by the Commercial Court. The Commercial Court has passed a well reasoned order and taken into account that the documents, the originals of which are sought to be produced, were documents issued by the petitioners themselves and submitted to the respondent no.2/MTNL. The Commercial Court has rightly

noted that the need to summon the aforesaid documents by way of an application arose because the witness of the petitioners took objection to the documents during evidence, as the copies produced by the respondent no.1 during evidence were photocopies obtained by way of RTI application. Further, the said documents are essential for the proper adjudication of the case and would in fact, cut short the controversy between the parties. The petitioners as well as the respondent no.2/MTNL have also been compensated with costs and no prejudice has been caused to the petitioners and the respondent no.2/MTNL by the production of the originals of the aforesaid documents as the said documents were issued by the petitioners themselves to respondent no.2/MTNL.

12. There is merit in the submission of the counsel for the respondent no.1 that the earlier application filed by him under Order XI Rules 1 and 2 of the CPC was withdrawn as not pressed in view of the fact that the respondent no.1 had obtained copies of the said documents by way of RTI application and hence, there was no requirement to seek production of the said documents from the respondent no.2/MTNL.

13. The judgment in *Hemant Kumar Singhal* supra is not applicable to the facts and circumstances of the present case as in the said case, it has been noted by the Court that the plaintiff therein was only trying to fill up the lacunae of its case by seeking rebuttal evidence when it had the opportunity to adduce the said evidence at an earlier stage. It was also noted that a similar application seeking the same relief had been rejected by the Court earlier. In the present case, it was only when the witness of the petitioners objected to the aforesaid documents being photocopies that the

respondent no.1 was compelled to file the application for summoning of the originals of the documents from respondent no.2/MTNL.

14. The Supreme Court in its judgment in *K.K. Velusamy Vs. N. Palanisamy* (2011) 11 SCC 275 while interpreting provisions of Section 151 of the CPC, has observed that the Court has inherent power to act in a manner to secure the ends of justice and the said power does not end when the evidence of the parties is closed.

15. In the present case, the Commercial Court has exercised its jurisdiction and allowed the aforesaid documents to be exhibited. There are no reasons for this Court in exercise of its jurisdiction under Article 227 of the Constitution of India to interfere with the said discretion exercised by the Commercial Court. While exercising jurisdiction under Article 227 of the Constitution of India, this Court is not sitting as a Court of appeal and the jurisdiction can only be exercised in case of patent illegality or manifest error on the face of record. Reliance in this regard may be made to *Surya Dev Rai Vs. Ram Chander Rai and Ors.* (2003) 6 SCC 675. In any event, the scope for interference under Article 227 of the Constitution of India is even more limited in the case of commercial suits in light of the judgment passed by a Division Bench of this Court (of which I was a member) in *Black Diamond Trackparts Pvt. Ltd. and Ors. Vs. Black Diamond Motors Pvt. Ltd.* 2021 SCC OnLine Del 394.

16. Accordingly, no grounds for interference are made out.

Dismissed.

AMIT BANSAL, J

DECEMBER 15, 2021

Sakshi R.