



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 22nd DAY OF FEBRUARY 2022

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

A. Nos.323 and 324 of 2022

in

C.S. No.304 of 2017

Sony Music Entertainment India Private Limited,
A Private Limited Company Incorporated and registered
Under the Indian Companies Act, 1956,
Having its Registered Office at, 92, Main Avenue,
Santacruz (West), Mumbai 400 054.

...Plaintiff

-Versus-

Sun TV Network,
A Company incorporated under the
Indian Companies Act, 1956,
Having its registered office at
Murasoli Maran Towers, 73, MRC Nagar Main Road,
MRC Nagar, Chennai – 600 028,
Tamil Nadu.

... Defendant

A. Nos.323 and 324 of 2022:-

Sun TV Network,
A Company incorporated under the
Indian Companies Act, 1956,
Having its registered office at
Murasoli Maran Towers, 73, MRC Nagar Main Road,
MRC Nagar, Chennai – 600 028,
Tamil Nadu.

...Applicant/ Defendant



-Versus-

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Sony Music Entertainment India Private Limited,
A Private Limited Company Incorporated and registered
Under the Indian Companies Act, 1956,
Having its Registered Office at, 92, Main Avenue,
Santacruz (West), Mumbai 400 054. ...Respondent /Plaintiff

A.No.323 of 2022:-

Application praying that this Hon'ble Court be pleased to extend the time and take on record the Statement of Truth filed on behalf of the defendant in support of the Written Statement dated 17.01.2018.

A.No.324 of 2022:-

Application praying that this Hon'ble Court be pleased to permit the Applicant/Defendant to file the Additional Documents listed as Schedule-A to the present application in C.S.No.304 of 2017.

These applications coming on this day before this court for hearing in the presence of Mr.Satish Parasaranan, Senior Counsel for M/s M.Sneha, M.A.Vimal Mohan, and V.Dinesh Raja, Advocates for the applicant in both the applications, and Mr.P.R.Raman, Senior Counsel for M/s A.Jenasenan, Advocates for the respondent in both the applications, and upon reading the Judge's Summons and the Affidavit of Jyothi Basu, filed in both applications, and this court observing that while the amount proposed to be



imposed as costs may not hurt the bottom line of the Defendant, the object is primarily to signal that there is a price to be paid for laxity and to eventually facilitate the completion of the transition adverted to at the outset, **it is ordered as follows:-**

That Subject to the following terms:-

(a) the Statement of Truth filed on behalf of the defendant in support of the Written Statement dated 17.01.2018 be and is hereby taken on record.

(b) the Applicant/Defendant herein be and is hereby permitted to file the Additional Documents listed as Schedule-A annexed hereunder in C.S.No.304 of 2017.

2. That the defendant herein shall pay costs assessed in a sum of Rs.50,000/- (Rupees Fifty Thousand only) to the Plaintiff within a period of two weeks from the date of receipt of a copy of this order.

3. That the Plaintiff herein be and is hereby permitted to file the affidavit/statement of admission/denial in respect of the documents permitted to be produced by the Defendant.

4. That the additional documents are permitted to be produced subject to objections as to admissibility, relevance and proof.

5. That the Defendant herein be and is hereby directed to extend full cooperation in fixing the case management schedule for expeditious



disposal of the suit.

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6. That the other applications be posted on 08.03.2022.

SCHEDULE “A”



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A. Nos.323 and 324 of 2022
in
C.S. No.304 of 2017

ORDER :-

DATED: 22.02.2022

THE HON'BLE MR. JUSTICE
SENTHILKUMAR RAMAMOORTHY

FOR APPROVAL: 28.02.2022

APPROVED ON: 01.03.2022



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

D A T E D : 22.02.2022

C O R A M :

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

APPLICATION Nos.323 and 324 of 2022

in

C.S.No.304 of 2017

Sun TV Network

A Company incorporated under the
Indian Companies Act, 1956,
Having Office registered at
Murasoli Maran Towers,
No.73, MRC Nagar Main Road,
MRC Nagar, Chennai – 600 028.
Tamil Nadu.

... Applicant / Defendant
(in both applications)

Vs

Sony Music Entertainment India Private Limited,
A Private Limited Company incorporated and registered
Under the Indian Companies Act, 1956,
Having its Registered Office
at No.92, Main Avenue,
Santacruz (West), Mumbai 40054.

... Respondent / Plaintiff
(in both applications)

Prayer in Application No.323 of 2022: This Application has been filed
under Order XIV Rule 8 of the O.S. Rules read with Sections 148 and 151
CPC and Order VI Rule 15A thereof to extend the time and take on the



Statement of Truth filed on behalf of the defendant in support of the written statement dated 17.01.2018.

Prayer in Application No.324 of 2022: This Application has been filed under Order XIV Rule 8 of O.S. Rules r/w Order XI Rule 1(10) of Amended CPC, to permit the Applicant/Defendant to file additional documents listed as Schedule "A" to the present Application in C.S.No.304 of 2017.

For Applicant : Mr.Satish Parasaran,
Senior Advocate
for M/s.M.Sneha
(in both applications)

For Respondent : Mr.P.R.Raman
Senior Advocate,
for M/s.A.Jenasenan
(in both applications)

COMMON ORDER

In this battle between two behemoths of the entertainment industry, these applications exemplify the pangs experienced by all the dramatis personae concerned in making the transition to a more exacting legal regime.

2. The suit was filed on 19.04.2017 seeking permanent injunctions to restrain the Defendant from infringing the Plaintiff's right in sound recordings, musical works, images and the like. In an application filed in



early 2017, the Defendant filed a counter enclosing about 167 documents in support thereof. The suit was declared as a commercial suit by an order passed in December 2017. The sole Defendant filed its written statement on 29.01.2018. The admission/denial of documents filed by the parties to the suit was completed some time in October 2019. The position, as on date, is that issues have not been framed in the suit. However, the Plaintiff filed three applications. Application No.8141 of 2019 was filed to strike off the written statement dated 17.01.2018. Two other applications, namely, Application Nos.8139 and 8140 of 2019 were also filed by the Plaintiff seeking summary judgment and decree in respect of specific parts of the claim made in the suit. These two applications were filed at this juncture.

3. Application No.323 of 2022 is filed by the Defendant to extend the time and take on record the statement of truth filed on behalf of the Defendant in support of the written statement dated 17.01.2018. The said application is dealt with first. The Applicant submits that the statement of truth was not filed when the written statement was filed in January 2018. In the counter to Application No.8141 of 2019, at paragraph 15, the Defendant took the position that the requirement of filing the statement of truth was incorporated in the Commercial Courts Act, 2015 (the Commercial Courts Act) upon its amendment on 21.08.2018. Therefore, the said requirement is



inapplicable to the Defendant. In course of oral arguments, learned senior counsel for the Defendant submitted that the position adopted in the above mentioned counter is not tenable in view of the fact that the amendment was with effect from the date of entry into force of the Commercial Courts Act. However, he submits that the fact that such retrospective amendment was not in force in January 2018, when the written statement was filed, justifies the filing of an application to extend time to receive the statement of truth.

4. The Plaintiff contests the application on more than one ground. The first ground raised by the Plaintiff is that there is no provision to condone delay or extend time for filing the statement of truth. The second contention is that the declaration in the statement of truth is false. With specific reference to paragraph 5 of the statement of truth, the Plaintiff states that the Defendant is making a declaration that he has filed all documents in his power, possession, control or custody. The said declaration is made in January 2022 with the full knowledge that the Defendant has in its possession about 167 documents, which were not filed with the written statement, and which it proposes to produce in the suit. For these reasons, the Plaintiff states that the statement of truth should not be accepted at this juncture.



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5. The requirement to append a statement of truth was introduced by the amendment made in August 2018 with effect from the date of entry into force of the Commercial Courts Act. By virtue of the amendment made to Order VI, Rule 15-A of the Code of Civil Procedure, 1908 (the CPC) by the Commercial Courts Act, a pleading which is not verified in the manner specified in sub-rule 1 thereto cannot be relied upon by the party concerned. In addition, the Court is conferred with the discretion of striking off pleadings which are not verified by a statement of truth. The object and purpose of introducing such amendment is not far to seek. Without doubt, the object and purpose is to ensure that parties exercise the necessary care in setting out all material facts truthfully in pleadings, along with all documents in support thereof, based on knowledge, information or belief, as the case may be, and not omit facts material to the dispute. The text of the sub-rules in Order VI, Rule 15-A disclose that the filing of a statement of truth is mandatory. There is some discretion vested in the court, however, with regard to the consequences of not complying with such requirement. In the case at hand, the Defendant was not required to file the statement of truth at the time of filing the written statement. Therefore, upon the amendment coming into force retrospectively, it was inevitable for the Defendant to file an application for permission to file the statement of



truth. Since the statement of truth is required to be filed in a prescribed format, the Defendant has no scope to tinker with the statement of truth to reflect the current factual scenario. In any case, the statement of truth verifies a written statement filed in January 2018 and is, therefore, intended to reflect the position as on that date. In these facts and circumstances, I am inclined to allow the application to take on record the statement of truth by extending time therefor.

6. Turning to the application to file the additional documents listed in the schedule to the judge's summons in Application No.324 of 2022, the Defendant submits that these documents were in its possession and power in January 2018. However, several reasons are cited for not producing the same along with the written statement. The first reason is that these documents are voluminous and could not be filed at the relevant time. Secondly, it is stated that the collation of the documents was a time consuming exercise since the suit is expansive in nature and pertains to about 254 movies. The third reason stated is the COVID-19 Pandemic. The fourth reason is the negotiations that took place between the parties for an amicable resolution of the dispute. The last reason is the change in personnel at the relevant department of the Defendant. The Defendant states



be allowed because the suit is at the pre-trial stage. Indeed, the Defendant states that even issues have not been framed in the suit. The next contention of the Defendant is that this application cannot be rejected merely because it may have the effect of defeating the Plaintiff's applications for summary judgment.

7. The Defendant states that Order XI Rule 1(10) enables the Court to grant leave to file documents which were not filed in spite of being within the Defendant's power, possession, control or custody at the time the written statement was filed. The only requirement for such purpose is to establish reasonable cause, which, according to the Defendant stands established for reasons set out in the preceding paragraph. The Defendant concluded by referring to and relying upon the following judgments:

(i) *Sugandhi (dead) by legal representatives and another v. P.Rajkumar represented by his power agent Imam Ali*, (2020) 10 SCC 706, wherein, at paragraphs 8 and 9, the Hon'ble Supreme Court held that procedural and technical hurdles should not be allowed to come in the way of the court doing substantial justice.

(ii) *ITC Limited v. JP Morgan Mutual Fund India Pvt. Ltd. and others*, 2020 SCC Online Cal 972, wherein the Calcutta High Court examined Order XI Rule 1(10) CPC and concluded that leave should be



granted if reasonable cause is made out, although the granting of such leave is not a matter of right.

(iii) *Hassad Food Company Q.S.C. and another v. Bank of India and others* 2019 SCC Online Del 10647, wherein the Delhi High Court considered the scope of the expression 'reasonable cause' by comparing and contrasting the same with the expressions 'good cause', and 'sufficient cause'. Upon carrying out such exercise, the Delhi High Court held that reasonable cause would require a lower degree of proof as compared to good cause.

8. The Plaintiff refutes these contentions on several grounds. The first contention of the Plaintiff was that the Defendant has not established reasonable cause for seeking to produce the documents at this juncture. The Plaintiff contends that the Defendant raised contradictory pleas in support of this application. On the one hand, the Defendant submitted that the documents are voluminous and, therefore, could not be submitted earlier; while, on the other, the Defendant stated that these documents were filed and also served on the Plaintiff earlier in an interim application. The next contention of the Plaintiff is that the documents are not relevant. By referring to the counter filed by the Defendant to the Plaintiff's applications, the Plaintiff states that the defence taken in the counter is that the Defendant



is entitled to broadcasting rights under the Copyright Act. In particular, the Plaintiff points out that the Defendant claims ephemeral rights. In such case, the Plaintiff states that the production of these documents would not advance the cause of the Defendant. Therefore, such production at this belated juncture should not be permitted. With regard to the Defendant's reliance on settlement related discussions as one of the reasons for delay, the Plaintiff contends that such negotiations were held in two phases and the first phase ended in December 2018. The second phase of discussion commenced much later and also lasted for a limited duration. The Plaintiff points out that the reliance on the Covid-19 pandemic lacks credibility. On the issue of prejudice, the Plaintiff contends that the application for production of documents was filed after the Plaintiff filed applications for summary judgment. Therefore, it is contended that considerable prejudice would be caused to the Plaintiff if the Defendant is permitted to produce these documents at this juncture. In support of these contentions, the Plaintiff placed reliance on the following judgments:

(i) *Woodward Governor India P. Ltd v. Commissioner of Income Tax and others 2001 SCC Online Del 1420*, wherein the Delhi High Court examined as to what constitutes reasonable cause. In paragraph 7 thereof, the Delhi High Court concluded that a reasonable cause is something which would reasonably lead any ordinarily prudent and cautious man, placed in



the position of the person concerned, to come to the conclusion that the same was the right thing to do.

(ii) *Nitin Gupta v. Texmaco Infrastructure and Holding Limited* 2019 SCC Online Del 8367, wherein at paragraphs 33, 38 and 39, the Delhi High Court held that the object and purpose of the Commercial Courts Act would be defeated if courts show leniency in the name of the interest of justice while considering an application for extension of time or to condone delay in complying with requirements under the Commercial Courts Act.

(iii) *Gold Rock Word Trade Ltd v. Veejay Lakshmi Engineering Works Limited* 2007 SCC Online Del 1140, wherein, at paragraphs 4 to 6, the impact of the deletion of Order 18 Rule 17A CPC was discussed.

(iv) Order dated 24.07.2017, Application No.2556 of 2017, wherein this Court concluded that a casual attitude towards the non filing of documents cannot be countenanced.

9. In light of the rival contentions, the question to be decided is whether the Defendant has established reasonable cause under Order XI Rule 1(10) of the Commercial Courts Act. The said provision is set out below:

"Order XI Rule 1(10)



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Save and except for sub-rule (7)(c)(iii), defendant shall not be allowed to rely on documents, which were in the defendant's power, possession, control or custody and not disclosed along with the written statement or counter-claim, save and except by leave of court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or counter-claim."

10. Upon perusal of the above sub-rule, it is evident that it applies in a situation where the Defendant seeks leave to produce documents which were in its power, possession, control or custody but were not produced along with the written statement. In order to obtain leave, it is necessary for the defendant concerned to establish reasonable cause for non disclosure.

11. In the interpretation of statutes and contracts, the paramount considerations are text and context. In this case, the text uses the expression 'reasonable cause'. In *Hassad Food Company*, the Delhi High Court held that the expression 'reasonable cause' implies a lower degree of proof as compared to 'good cause' and that the expression 'sufficient cause' implies the highest degree of proof. If all three expressions were to be used in the



exercise cannot be carried out divorced from the context. The context, in the present case, is the Commercial Courts Act which has imposed strict time lines so as to ensure that commercial disputes are resolved expeditiously. Therefore, in my view, the use of the expression 'reasonable cause', when seen in context, does not justify the inference that a low threshold is imposed.

12. Against this backdrop, turning to the facts of the present case, the application was filed in January 2022 for the production of additional documents which were not produced along with the written statement filed in January 2018. Thus, about four years have elapsed from the date of filing the written statement. The justification for not filing these documents are, *inter alia*, the following: the documents are voluminous; collation was time consuming because of the expansive nature of the suit; negotiations were held towards an amicable settlement; and the lock down occasioned by the Covid-19 pandemic.

13. Even in the statutory context of the Commercial Courts Act, what constitutes 'reasonable cause' would hinge on the answers to at least two questions: reasonable cause for what and in what circumstances. In this case, the Defendant is required to establish reasonable cause for filing documents in its possession and power belatedly. At least four reasons were



cited. As indicated above, the circumstances, such as the stage of the suit, are also material in determining whether there is reasonable cause. The suit is at the pre-trial stage and issues have not been framed. Without doubt, the production of such documents at this juncture does put the Plaintiff to prejudice. However, such prejudice should be balanced against the likely prejudice to the Defendant, if it were not permitted to produce these documents, and the latter outweighs the former. If this application were to be rejected, the Defendant, which filed these documents at the interlocutory stage, would be denied the opportunity of relying on these documents in defending the suit. It is to enable the Court to exercise the level of discretion necessary in such matters and balance the scales that statutes employ terminology with sufficient 'play in the joints', elasticity and capaciousness, such as 'good cause', 'reasonable cause' and 'sufficient cause'.

14. In addition, the Defendant has established *prima facie* that these documents are relevant for purposes of defending this action. Although the Plaintiff contended that these documents are not germane in view of the assertion of ephemeral rights, the pleadings in the written statement do not lead to the inference that only ephemeral rights are asserted, and any conclusions should await final disposal. While the reasons stated by the Defendant are not entirely in consonance with one another, the Defendant is

entitled to succeed upon taking into consideration all the reasons and



circumstances adverted to above, albeit by putting the Defendant on terms.

While the amount proposed to be imposed as costs may not hurt the bottom line of the Defendant, the object is primarily to signal that there is a price to be paid for laxity and to eventually facilitate the completion of the transition adverted to at the outset.

15. Accordingly, Application Nos.323 and 324 of 2022 are allowed on the following terms:

(i) The Defendant shall pay costs assessed in a sum of Rs.50,000/- (Rupees fifty thousand only) to the Plaintiff within a period of two weeks from the date of receipt of a copy of this order.

(ii) The Plaintiff is permitted to file the affidavit/statement of admission/denial in respect of the documents permitted to be produced by the Defendant.

(iii) The additional documents are permitted to be produced subject to objections as to admissibility, relevance and proof.



(iv) The Defendant is directed to extend full cooperation in fixing the case management schedule for expeditious disposal of the suit.

(v) List the other applications on 08.03.2022.

Sd./-S.K.R.J.
22.02.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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