



A.No.4844 of 2022
in
C.S (Comm. Div.) No.66 of 2021

M.SUNDAR.J.,

This order will now dispose of captioned application.

2. In this order parties shall be referred to by their respective ranks in the main suit for the sake of convenience and clarity.

3. Mr.N.Surya Senthil along with Ms.Y.KAiswarya, learned counsel of M/s.Surana and Surana (Law Firm) for sole plaintiff and Mr.R.Sathish Kumar, learned counsel for sole defendant are before this Commercial Division.

4. Plaintiff has taken out the captioned application for receiving one additional document. To be noted, 46 documents have been filed along with the plaint. This Commercial Division is informed that trial is underway before learned 'Additional Master I' ['AM I'] and PW1 is in the witness box.

5. Adverting to the support affidavit, learned counsel for plaintiff who has taken out the captioned application submits that only one document is now sought to be received, that is Chartered Accountant's certificate qua sales turnover and sales promotional expenses for the financial year 2020-21 being Certificate dated 15.06.2021. Adverting to paragraph 3 of the support affidavit, learned counsel submits that at the time of presenting the plaint a provisional certificate was filed, the numbers have now been finalized and that has necessitated the captioned application.

6. Learned counsel for defendant very fairly submits that he is not



opposing the prayer but only requests for making it clear that receiving of document is subject to proof and relevance i.e., the usual caveat. This by itself draws the curtains on the captioned application.

7. However, before parting with the application, this Commercial Division deems it appropriate to set out the following:

a) Judge's summons in the captioned application has been taken out under Order VII Rule 14(3) of 'The Code of Civil Procedure, 1908' ['CPC' for the sake of brevity and convenience]. This is clearly impermissible owing to amended Order XI Rule 7 of 'amended Code of Civil Procedure, 1908' [hereinafter 'amended CPC' for brevity and convenience] as amended by 'The Commercial Courts Act, 2015 (Act 4 of 2016)', [hereinafter 'CCA' for the sake of convenience and clarity], which reads as follows:

'7. Certain provisions of the Code of Civil Procedure, 1908 not to apply

For avoidance of doubt, it is hereby clarified that Order XIII Rule 1, Order VII Rule 14 and Order VIII Rule 1A of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to suits or applications before the Commercial Divisions of High Court or Commercial Courts.'



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b) This takes this Commercial Division to the question as to the provision under which such an application can be filed under amended CPC. Such an application can be filed under Order XI Rule 1 Sub-rule (5) of amended CPC, which reads as follows:

'(5) The 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 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. '

c) Therefore, the prayer should necessarily be one seeking leave of this Commercial Division after establishing reasons for non-disclosure of the documents sought to be received along with the plaint. This Commercial Division treats the captioned application as one under Order XI Rule 1(5) of amended CPC.



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8. Reverting to the application on hand, in the light of the narrative thus far, the same is ordered as prayed for subject to the usual caveat that the documents received is subject to proof and relevance. There shall be no order as to costs.

31.10.2022

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gpa

Note to Registry: Registry to take note of series of orders passed in this regard.



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