

\$~15 (Appellate)

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

+ **CM(M) 114/2021**

ADS HI-TECH POLYMERS PRIVATE LIMITED & ORS.

..... Petitioners

Through: Ms. Bharti Chawla, Adv. for
Petitioners 2 and 3

versus

M/S D R POLYMERS LTD

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

28.04.2022

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1. This petition, under Article 227 of the Constitution of India, assails the order dated 12th December, 2019, passed by the learned Additional District Judge (the learned ADJ) in CS No. 610504/2016 to the extent the order allows the application filed by the respondent (the plaintiff before the learned ADJ) under Order VII Rule 14 of the Code of Civil Procedure, 1908 (CPC).

2. The aforesaid suit, at the instance of the plaintiff, sought recovery, from the petitioners (the defendant before the learned ADJ) of an amount of ₹ 50,98,710/-, against certain goods and services stated to have been supplied by the respondent to Petitioner 1.

3. In the written statement filed by them, the petitioners contended

that no amounts were due or payable by them to the respondent and that in fact all payments due to the respondent had been made by the petitioners. Para 8 of the written statement filed by the petitioners, which so avers, reads thus:

“8. Without prejudice, it is submitted that the alleged bills are pertaining to the period 28.10.2013 to 19.06.2014 and are to the tune of Rs.44,12,775/- (Rupees Forty Four Lacs Twelve Thousand Seven Hundred and Seventy Five Only). It is submitted that for the said period, i.e. from 28.10.2013 onwards, the Defendant No.1 has made total payments of more than the alleged outstanding dues of Rs.44,12,775/- (Rupees Forty Four Lacs Twelve Thousand Seven Hundred and Seventy Five Only) to the Plaintiff Company on on-account basis immediately after the bills were raised.”

Details of the payments made by Defendant No.1 are as follows:

Alleged outstanding Bills			Payment made by defendant no.1 company	
S. No.	Date	Amount	Date	Amount
1.	28.10.2013	₹ 3,18,240/-	30.10.2013	₹ 2,00,000/-
2.	28.10.2013	₹ 30,600/-	07.11.2013	₹ 1,50,000/-
3.	07.11.2013	₹ 3,12,120/-	09.11.2013	₹ 3,00,000/-
4.	12.11.2013	₹ 3,04,317/-	20.11.2013	₹ 1,10,000/-
			21.11.2013	₹ 2,00,000/-
5.	21.11.2013	₹ 2,34,090/-	25.11.2013	₹ 3,50,000/-
6.	26.11.2013	₹ 78,030/-	04.12.2013	₹ 4,25,000/-
	27.11.2013	₹ 3,12,120/-		
7.	05.12.2013	₹ 4,68,180/-	11.12.2013	₹ 5,20,000/-
8.	13.12.2013	₹ 3,12,120/-	21.01.2014	₹ 3,60,000/-
9.	21.01.2014	₹ 3,12,120/-	24.01.2014	₹ 3,50,000/-
10.	24.01.2014	₹ 3,12,120/-	31.01.2014	₹ 3,50,000/-
11.	01.02.2014	₹ 3,12,120/-	04.02.2014	₹ 3,50,000/-
12.	04.02.2014	₹ 3,12,120/-	03.03.2014	₹ 3,50,000/-
13.	04.03.2014	₹ 2,02,878/-	26.03.2014	₹ 2,60,000/-
14.	11.06.2014	₹ 2,95,800/-	11.06.2014	₹ 3,30,000/-
15.	19.06.2014	₹ 2,95,800/-	19.06.2014	₹ 3,30,000/-
			16.01.2015	₹ 3,20,000/-

A bare perusal of the above table makes it evident that the Defendant No.1 Company has consistently paid the alleged outstanding invoices shortly after the invoices were raised and have to some extent made excess payments. Thus, there are no outstanding dues and the present suit is liable to be dismissed on this ground alone.”

4. Ms. Bharti Chawla, learned Counsel for the plaintiff has also drawn my attention to the corresponding paragraph in the replication filed by the respondent, which reads as under:

“6. That in reply to para 8 of preliminary objections & submissions of written statement it is submitted that defendant asked plaintiff to reconcile the ledger account which plaintiff served upon them and subsequently defendants reconciled their statement and acknowledged the said liability by sending plaintiff's ledger account maintained in their own books of accounts to the plaintiff with-a remark "we confirm the same" alongwith their rubber stamp seal. The defendants confirmed that amount of Rs. 46,76,148/- is payable to plaintiff on 05.03.2016.”

5. Following this, the petitioners moved an application under Order VIII Rule 1A of the CPC, to place on record bank statements and certificates to support the assertions contained in para 8 of the written statement to the effect that all payments due had been made by the petitioners to the respondent.

6. The respondent, thereupon, moved a corresponding application under Order VII Rule 14 of the CPC, to place certain additional documents on record to meet the documents filed by the petitioner. The application under Order VII Rule 14 sought to aver that the documents now placed on record by the petitioner belong to certain transactions between the petitioners and the respondent at Haridwar

and did not pertain to the transactions on which the respondent had sued the petitioners.

7. By the impugned order, the learned ADJ has allowed both applications. The following paragraphs from the impugned order merit reproduction:

“In the application under Order VII Rule 14, CPC, plaintiff has stated that payments which were shown to be made are qua goods delivered from Haridwar office of the plaintiff. It is stated that plaintiff had dealing with the defendants and goods were delivered from both Haridwar as well as Delhi office. It is stated that by averment that payment is already made, defendant is misguiding the court. Hence, plaintiff has sought to place on record documents such as Ledger account, invoices, VAT returns, Excise returns etc. of both places i.e. Delhi and Haridwar to crystalize that payment which were received were against delivery made from Haridwar office.

Written arguments filed on behalf of plaintiff. Same are perused and considered.

I have heard and considered the rival contentions and have perused the record.

Both the applications have been resisted by respective opposite parties.

Defendant has stated in the application that documents could not be filed with written statement as despite their best efforts, bank did not give said documents to defendant no.1 company. Defendant has also mentioned the specific dates when E-mail was sent by defendant no.1 company to the bank requesting them to give requisite record. Application is moved as soon as record has been obtained. Application is duly supported by affidavit, therefore, I do not find any ground to disbelieve the averments made in the application. Further, documents sought to be placed on record are key documents to prove the defence. Defence is already taken in the written statement and documents are sought to be placed on record in support of those pleadings.

Perusal of the record shows that vide order dated 21.12.2016, my Ld. Predecessor has held that defendant will lead evidence first. Thereafter, no evidence has been recorded till date. Hence, even if documents are placed on record, plaintiff will get ample opportunity to cross examine defendant's witness on the same and will not be prejudiced by filing of the documents.

Similarly, documents sought to be filed on record by plaintiff are in response to the averment made in the written statement. Though, there is no explanation as to why said documents were not filed along with replication but as already stated above that evidence has not begun in the present matter and documents are essential to finally decide the dispute between parties. In view of the above discussion, both the applications are allowed. Additional documents filed along with both applications are taken on record.”

8. Ms. Chawla, learned Counsel for the petitioners, submits that, while the documents placed on record by the petitioners with their applications under Order VIII Rule 1A of the CPC were in support of the stand adopted by the petitioners in para 8 of the written statement filed by them in response to the suit of the respondent, the documents that the respondent sought to introduce did not support any averment in the replication filed by the respondent in answer to the written statement of the petitioners.

9. She submits that the plea that the transactions to which the petitioners had alluded in para 8 of their written statement related to certain dealings in Haridwar, figured for the first time in the application under Order VII Rule 14 filed by the respondent, and was unsupported by any pleading in the replication.

10. For this reason, she submits that the learned ADJ ought not to have allowed the said document to be taken on record.

11. The value to be attached to the documents filed by the respondents with its application under Order VII Rule 14, in the backdrop of the averments contained in the replication, are a matter of argument, and it would be open to the petitioners to argue this aspect out before the learned ADJ. However, insofar as the decision to allow the documents, filed by the respondent with its application under Order VII Rule 14, to be taken on record is concerned, I do not deem the present case one deserving of interference in exercise of jurisdiction vested in this Court by Article 227 of the Constitution of India, as the learned ADJ has allowed the said documents to be taken on record only because they were being sought to be introduced in order to meet the documents filed by the petitioners with their application under Order VIII Rule 1A. the petitioners had not placed, on record, any documents with their written statement, in support of the averments contained in para 8 thereof. These documents were sought to be introduced in the record only with the application filed by the petitioners under Order VIII Rule 1A. If, therefore, the respondent sought to place, on record, documents to disprove the stand of the petitioners predeceased on the documents filed by them under Order VIII Rule 1A, in my view, the learned ADJ was perfectly justified in allowing the documents to be taken on record. The reasoning of the learned ADJ, to allow the said documents to be taken on record, is, therefore, unexceptionable.

12. At the cost of repetition, the issue of the evidentiary value of the documents filed by the respondent would remain open to be agitated before the learned ADJ in respect of which this Court does not express any opinion.

13. For the aforesaid reasons, given the limited nature of the scope of jurisdiction of this Court under Article 227 of the Constitution of India, this case does not appear to me to be a fit case for interference.

14. This petition, accordingly, stands disposed of in the aforesaid terms, with no order as to costs.

APRIL 28, 2022
dsn

C. HARI SHANKAR, J.

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