

\$~136(Appellate Side)

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

+ CM(M) 405/2022, CM APPL. 20955/2022 & CM APPL. 20956/2022

BELA CREATION PVT LTD Petitioner
Through: Mr. V.S. Dubey, Adv.

versus

ANUJ TEXTILES Respondent
Through: None

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

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

% **02.05.2022**

1. The impugned order dated 24th February, 2022 rejects an application under Order VII Rule 14 of the Code of Civil Procedure, 1908 (CPC), filed by the petitioner, as the defendant before the learned District Judge (Commercial Court) ("the Commercial Court", hereinafter) in CS (Comm) 294/2019 (*Anuj Textiles v. Bela Creations Pvt. Ltd.*), with costs of ₹ 5000.

2. CS (Comm) 294/2019 was filed by the respondent-Anuj Textiles against the petitioner. The respondent claimed to have supplied fabric to the petitioner during the period 4th August, 2017 to 20th June, 2018, against which an amount of ₹ 56.64,846/- was alleged to be due and payable by the petitioner to the respondent. The suit, therefore, sought a decree, in favour of the respondent and against the petitioner for ₹ 56,64,846/- alongwith *pendente lite* and future interest

@ 18% p.a. from the date of filing the suit till the realisation of the amount and costs.

3. The petitioner filed a written statement and a counter claim in response to the suit of the respondents, accompanied by a statement of truth.

4. This was followed by two affidavits of witnesses whose evidence the petitioner desired to lead, in support of the written statement as well as the counter claim. Additionally, the petitioner also filed an application under Order VII Rule 14(3)¹ of the CPC to take on record certain additional documents.

5. The impugned order dismisses the aforesaid application under Order VII Rule 14(3) of the CPC, against which the petitioner is before this Court.

6. The prayer for permission to take on record the invoices sought to be introduced under the application under Order VII Rule 14 was that no invoices had been reflected in the list of documents filed with the written statement and counter claim and that, though there was a reference to the aforesaid invoices, the invoices themselves were not annexed thereto. The invoices which were now being sought to be

¹ 14. **Production of document on which plaintiff sues or relies. –**

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

placed on record, it was contended, were reflected in the GST returns which were already filed by the petitioner as well as in the ledger account of the respondent.

7. The plea for taking on record additional documents was sought to be founded on the contention that the Counsel, in the law firm which was prosecuting the case on behalf of the petitioner had left the law firm during COVID and that the main Counsel of the law firm was not aware of the fact that the original invoices had not been filed. It was only during the cross examination of PW1 on 2nd December, 2021, contended the petitioner, that the fact of non-filing of the invoices came to light. Inasmuch as the invoices found reference in the GST returns already filed by the petitioner, it was sought to be contended that the prayer for permission to file the invoices was required to be allowed.

8. The learned Commercial Court has, in rejecting the aforesaid application under Order VII Rule 14(3) of the CPC, filed by the petitioner, noted the fact that, in para 6 of the statement of truth accompanying the written statement filed in response to the plaint, the director of the petitioner had solemnly affirmed to having filed all documents in his possession, power and control and that he had no other documents in his power or possession. That being so, in the absence of any averment that the invoices which were being sought to be introduced under cover of the application under Order VII Rule 14(3) were not in the power or possession of the petitioner at the time of filing the statement of truth, the learned Commercial Court held that

the petitioner could not, at a belated stage, seek to introduce the said documents.

9. I have heard Mr Dubey, learned Counsel for the petitioner.

10. An identical situation came up before the Supreme Court in *Sudhir Kumar @ S. Baliyan v. Vinay Kumar G.B.*² In a commercial suit filed by the appellant Sudhir Kumar before the learned Commercial Court, Sudhir Kumar moved an application under Order VII Rule 14(3) of the CPC, to place certain additional documents on record. The learned Commercial Court dismissed the application, against which Sudhir Kumar petitioned this Court under Article 227 of the Constitution of India and, having failed in the petition, moved the Supreme Court under Article 136 of the Constitution of India.

11. Sudhir Kumar (“Sudhir”, hereinafter) had, in his suit, sought an injunction against the respondent Vinay Kumar (“Vinay”, hereinafter) from infringing his registered trademarks. As required by Order XI Rule 1³ of the CPC, as amended by the Commercial Courts Act, 2015,

² 2021 SCC OnLine SC 734

³ 1. **Disclosure and discovery of documents. –**

(1) Plaintiff shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint, including:

(a) Documents referred to and relied on by the plaintiff in the plaint;
(b) Documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the plaint, irrespective of whether the same is in support of or adverse to the plaintiffs case;
(c) nothing in this rule shall apply to documents produced by plaintiffs and relevant only –
(i) for the cross-examination of the defendant's witnesses, or
(ii) in answer to any case setup by the defendant subsequent to the filing of the plaint, or
(iii) handed over to a witness merely to refresh his memory.

(2) The list of documents filed with the plaint shall specify whether the documents in the power, possession, control or custody of the plaintiff are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document, mode of execution, issuance or receipt and line of custody of each document.

the suit was accompanied by a list of all documents and photocopies of all documents in the power, possession, control and custody of

(3) The plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody.

Explanation.—A declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix.

(4) In case of urgent filings, the plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath and subject to grant of such leave by court, the plaintiff shall file such additional documents in court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession, control or custody.

(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.

(6) The plaint shall set out details of documents, which the plaintiff believes to be in the power, possession, control or custody of the defendant and which the plaintiff wishes to rely upon and seek leave for production thereof by the said defendant.

(7) The defendant shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the written statement or with its counter-claim if any, including -

(a) the documents referred to and relied on by the defendant in the written statement;

(b) the documents relating to any matter in question in the proceeding in the power, possession, control or custody of the defendant, irrespective of whether the same is in support of or adverse to the defendant's defence;

(c) nothing in this rule shall apply to documents produced by the defendants and relevant only -

(i) for the cross-examination of the plaintiff's witnesses,

(ii) in answer to any case setup by the plaintiff subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.

(8) The list of documents filed with the written statement or counter-claim shall specify whether the documents, in the power, possession, control or custody of the defendant, are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document being produced by the defendant, mode of execution, issuance or receipt and line of custody of each document;

(9) The written statement or counter-claim shall contain a declaration on oath made by the deponent that all documents in the power, possession, control or custody of the defendant, save and except for those set out in sub-rule (7)(c)(iii) pertaining to the facts and circumstances of the proceedings initiated by the plaintiff or in the counter-claim, have been disclosed and copies thereof annexed with the written statement or counter-claim and that the defendant does not have in its power, possession, control or custody, any other documents;

(10) 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;

(11) The written statement or counter-claim shall set out details of documents in the power, possession, control or custody of the plaintiff, which the defendant wishes to rely upon and which have not been disclosed with the plaint, and call upon the plaintiff to produce the same;

(12) Duty to disclose documents, which have come to the notice of a party, shall continue till disposal of the suit.

Sudhir, pertaining to the suit. Thereafter, Sudhir sought to introduce certain additional documents, principally invoices, as part of his evidence, for which purpose he moved an application under Order VII Rule 14(3) of the CPC, seeking leave of the Court to do so.

12. This application was rejected by the learned Commercial Court on 13th November, 2019.

13. Vinay, thereafter, filed his written statement in response to the suit of Sudhir. He did not, however, file, with the written statement, the list of documents, accompanied by the documents, on which he sought to place reliance and which were in his power, possession, control or custody, as required by Order XI Rule 1(7). He, however, subsequently moved an application under Order XI Rule 1(10), to place the documents on record. The application was rejected, in part, by the learned Commercial Court, against which Vinay appealed to this Court. This Court, vide order dated 7th December, 2020, allowed the appeal and took on record, all documents filed by Vinay.

14. Sudhir moved this Court, under Article 227 of the Constitution of India, challenging the order, dated 13th November, 2019, whereby the learned Commercial Court had rejected the application filed by him under Order VII Rule 14 to place additional documents on record. The said petition was dismissed by this Court on 6th April, 2021, against which Sudhir petitioned the Supreme Court under Article 136 of the Constitution of India.

15. The Supreme Court observed, at the outset, that, by operation of Order XI Rule 7⁴ of the CPC, as amended by the Commercial Courts Act, Order VII Rule 14 of the CPC had no application to commercial suits. Any application, for introduction of additional documents in a commercial suit, it was observed, was required to be filed under Order XI Rule 1(5) of the CPC (where the application was moved by the plaintiff) or under Order XI Rule 1(10) of the CPC (where the application was moved by the defendant), and not under Order VII Rule 14. Sudhir had, therefore, it was observed, invoked the wrong provision in his application for placing additional documents on record. Nonetheless, as such an application could have been moved under Order XI Rule 1(5), the Supreme Court deigned to treat the application as one having been filed under the said provision.

16. This position, I may note, applies equally to the case before me. The present petitioner could not have filed the application for additional documents under Order VII Rule 14 of the CPC. Such an application could, however, have been maintained under Order XI Rule 1(10); ergo, following the example set by the Supreme Court, I proceed to examine the sustainability of the impugned Order of the learned Commercial Court, treating the application as having been filed under Order XI Rule 1(10) of the CPC, as amended by the Commercial Courts Act. Even otherwise, it is a trite position, in law, that the mere citing of a wrong provision, in the application, would not

⁴ 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 1-A 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.

be fatal, so long as the application would lie under another provision, just as exercise of power under a wrong provision would not imperil such exercise, where the power exists, albeit elsewhere. One may refer, in this context, to *Vijaya Bank v. Shyamal Kumar Lodh*⁵, *N. Mani v. Sangeetha Theatre*⁶ and *Pruthviraj Singh v. Jayesh Kumar*⁷. What matters, jurisprudentially, is whether the power exists, not whether the power is *said* to exist.

17. Applying the above principles to the facts before it, the Supreme Court, in paras 30, 31, 33, 35 and 36 of the report, held thus:

“30. Order XI Rule 1(5) further provides that 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. *Therefore on combined reading of Order XI Rule 1(4) read with Order XI Rule 1(5), it emerges that (i) in case of urgent filings the plaintiff may seek leave to rely on additional documents; (ii) within thirty days of filing of the suit; (iii) making out a reasonable cause for non disclosure along with plaint.*

31. Therefore a further thirty days time is provided to the plaintiff to place on record or file such additional documents in court and a declaration on oath is required to be filed by the plaintiff as was required as per Order XI Rule 1(3) if for any reasonable cause for non disclosure along with the plaint, the documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint. *Therefore plaintiff has to satisfy and establish a reasonable*

⁵ (2010) 7 SCC 635

⁶ (2004) 12 SCC 78

⁷ (2019) 9 SCC 533

cause for non disclosure along with plaint. However, at the same time, the requirement of establishing the reasonable cause for non disclosure of the documents along with the plaint shall not be applicable if it is averred and it is the case of the plaintiff that those documents have been found subsequently and in fact were not in the plaintiff's power, possession, control or custody at the time when the plaint was filed. Therefore Order XI Rule 1(4) and Order XI Rule 1(5) applicable to the commercial suit shall be applicable only with respect to the documents which were in plaintiff's power, possession, control or custody and not disclosed along with plaint. Therefore, the rigour of establishing the reasonable cause in non disclosure along with plaint may not arise in the case where the additional documents sought to be produced/relied upon are discovered subsequent to the filing of the plaint.

33. It emerges from the record that the first suit was filed by the plaintiff in the month of October, 2018, bearing TM No. 236 of 2018, restraining the defendant from infringing and passing-off plaintiff's Trade Marks. That an ex-parte interim injunction was passed in favour of the plaintiff by order dated 29.10.2018. It appears having realized and found that the earlier suit was not in consonance with the provisions of the Commercial Courts Act, the plaintiff withdrew the said suit being TM No. 236 of 2018 on 27.07.2019 with liberty to file a fresh suit as per the Commercial Courts Act, 2015. Therefore, the second suit was filed on 31.08.2019 and within a period of thirty days from filing of the second suit the appellant herein - original plaintiff preferred the present application seeking leave of the court to file additional documents. *In the application, it was specifically mentioned that so far as the invoices are concerned, the same were not in its possession at the time of the filing of the plaint and so far as the other documents are concerned they were not filed due to they being voluminous. Therefore, so far as the invoices sought to be relied on/produced as additional documents ought to have been permitted to be relied on/produced as it was specifically asserted that they were not in his possession at the time of filing of the plaint/suit.*

35. Even the reason given by the learned Commercial Court that the invoices being suspicious and therefore not granting leave to produce the said invoices cannot be accepted. *At the stage of granting leave to place on record additional documents the court is not required to consider the genuineness of the documents/additional documents, the stage at which genuineness of the documents to be considered during the trial and/or even at the stage of deciding the application under Order XXXIX Rule 1 that too while considering prima facie case.* Therefore, the learned Commercial Court ought to have granted leave to the plaintiff to rely on/produce the invoices as mentioned in the application as additional documents.

36. *Now, so far as the other documents sought to be relied on/produced as additional documents other than the invoices are concerned the same stands on different footing. It is not disputed and in fact it was specifically admitted and so stated in the application that those additional documents other than the invoices were in their possession but not produced being voluminous and that the suit was filed urgently. However, it is to be noted that when the second suit was filed, it cannot be said to be urgent filing of the suit for injunction, as the first suit was filed in the month of October, 2018 and there was an ex parte ad interim injunction vide order dated 29.10.2018 and thereafter plaintiff withdrew the said first suit on 27.07.2019 with liberty to file a fresh suit as per the Commercial Courts Act and the second suit came to be filed on 31.08.2019 after period of one month of the withdrawal of first suit. Therefore the case on behalf of the plaintiff that when the second suit was filed, it was urgently filed therefore, the additional documents sought to be relied upon other than the invoices were not filed as the same were voluminous cannot be accepted. And therefore as such Order XI Rule 1(4) shall not be applicable, though the application was filed within thirty days of filing of the second suit. While seeking leave of the court to rely on documents, which were in his power, possession, control or custody and not disclosed along with plaint or within the extended period set out in Order XI Rule 1(4), the plaintiff has to establish the reasonable cause for non disclosure along with plaint.”*

(Emphasis supplied)

18. Thus, the Supreme Court divided the additional documents, that Sudhir desired to bring on record, into two categories. The first related to invoices regarding which there was a specific assertion, in the plaint filed by Sudhir, that they were not in his possession at the time of filing of the plaint. The learned Commercial Court, it was noticed, had rejected the application to bring the said documents on record on the ground that the invoices were suspicious. The Supreme Court held that, at the stage of deciding of an application under Order XI Rule 1, to bring additional documents on record, the Court could not concern itself with the genuineness or the veracity of the documents. Inasmuch as there was a specific assertion, in the plaint, that the invoices were not in the power, possession, control or custody of Sudhir at the time of filing of the plaint, the Supreme Court held that the learned Commercial Court ought to have allowed the documents to be brought on record.

19. The second category of documents, however, constituted invoices which were admitted, by Sudhir, in his application, to have been in his possession at the time of filing of the plaint. The justification cited for producing the documents at a later stage was that they were voluminous, and that there was urgency in filing the plaint. On facts, the Supreme Court found that the ground of urgency was not borne out. As the invoices were within the possession of Sudhir at the time of filing of the plaint, and the ground of urgency in filing the plaint, cited as the justification for not filing the said invoices along with the

plaint, was found to be bereft of merit, the Supreme Court upheld the decision not to allow the said invoices to be taken on record.

20. The application under Order VII Rule 14 of the CPC, filed by the petitioner in the present case contains the following averments (reproduced verbatim), to justify the prayer for taking on record the invoices sought to be introduced under the application:

“2. That the counter claimant submitted that copy of invoices, which was not filed at the time of written statement as well as counter claimant but the counter claimant had filed the GST Return along with Ledger account in which all invoices has already entered.

3. It is respectfully submitted that earlier the aforesaid cases had been handled by the associate member of our firm namely Sunil Ojha but during the Covid time, he had left our firm and so he cannot filed the aforesaid documents.

4. It is most respectfully submitted that in the most of the proceedings conducted through Video conferencing in which has been happier by the main council mainly Vinay S. Dubey, therefore he was not aware that the original invoices, which is not in the record because the invoices is already filed in the record of our firm fine but the main council shop at the time of cross-examination of plaintiff on the dated 02-12-2021 and during the cross-examination and he has was deposited partly court fee on their claim amount then he came to know that the aforesaid invoices were not filled in judicial record. It is further submitted that main council had also been seen during covit 19 because his brother namely abhay dubey (associate member) had been also suffered from acute problem (covit 19). However he was not properly enquired about filing of the above document.

5. That it is respectfully submitted that the above invoices is already recorded in the GST return/document as well as Ledger statement had filed therefore it is not a new document and view of the pandemic it has been not filed by

the Counter claimant.

6. That the counter claimant wants to file aforesaid document (27 invoices) went into his knowledge and skills evidence is pending before this Hon'ble court. It is submitted that the aforesaid document had filed in counter claim therefore it is also read as in case titled Anuj Textile versus Bela Creation Pvt Ltd and Akanksha textile versus Bela creation Pvt Ltd."

21. A word of caution: Before advertng to the merits of the above application, and the sustainability of the impugned decision of the learned Commercial Court not to allow the application, one aspect needs to be noted, especially in view of the afore-extracted pleadings. Where Counsel represent parties, Counsel have a bounden duty to ensure that pleadings, filed before a Court, are intelligible. There is not a single sentence, in the afore-extracted paras from the application of the petitioner under Order VII Rule 14 which is grammatically or syntactically correct; worse, one has to strain one's imagination, considerably, to be able to fathom what the application seeks to state. Such pleadings do little credit to Counsel, as they betoken a completely lackadaisical attitude, in filing pleadings before the Court. They also indicate, *prima facie*, lack of due respect to the Court and to judicial procedure.

22. Be that as it may. Clearly, even while acknowledging that the invoices, the non-filing with the Written Statement of which the application of the petitioner seeks to justify, the ground urged is that that, though the invoices were on the record of the file with the law firm which had been retained by the petitioner, the earlier Counsel

who was handling the case had not filed the invoices in Court. By no stretch of imagination can such a ground be treated as sufficient to justify non-filing of the invoices along with the written statement.

23. Moreover, as the learned Commercial Court correctly held, the written statement and counter-plaint were accompanied by a Statement of Truth, in which it was specifically stated thus:

“6. I say that all documents and the power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the defendant company has been disclosed and copies thereof next with the list of documents filed with the written statement/counter claim, and that the defendant does not have any other documents in its power, possession and control or custody.”

In the absence of any averment to the effect that the aforesaid declaration, contained in the Statement of Truth accompanying the written statement and counter-plaint filed by the petitioner, was incorrect, the learned Commercial Court was justified in holding that additional documents, which were in the custody of the petitioner at the time of filing the written statement, could not be permitted to be introduced at a later stage. “Reasonable cause”, within the meaning of Order XI Rule 1(10) of the CPC, as amended by the Commercial Courts Act, cannot extend to negligence in filing of documents before the Court. “Reasonable cause”, necessarily, must refer to a cause which was outside the control of the petitioner, and which prevented the petitioner from filing the concerned documents along with the written statement.

24. In these circumstances, the decision of the learned Commercial Court not to allow the placing of additional documents by the petitioner, on record, cannot be faulted. No occasion exists for this Court to interfere therewith.

25. In this context, one may also note the fact that the peripheries of the jurisdiction vested in this Court under Article 227 of the Constitution of India are well defined. This Court, exercising jurisdiction under Article 227, does not sit in appeal or revision over the decision of the court below. Nor can this Court, in legitimate exercise of its Article 227 jurisdiction, deal with the litigation pending before the court below in a manner different from the manner in which the court below has chosen to deal with it, unless the manner in which the court below has dealt with the situation calls for supervisory correction. The Article 227 court supervises; it does not monitor. One may refer, in this context, with advantage, to the judgments in *Estralla Rubber v. Dass Estate (P) Ltd.*⁸, *Garment Craft v. Prakash Chand Goel*⁹ and *Puri Investments v. Young Friends & Co.*¹⁰, the relevant passages of which I have attempt to extract in my recent decision in *Lucina Land Development Ltd. v. Union of India*¹¹.

26. Viewed thus, the impugned decision of the learned Commercial Court is entirely in keeping with Order XI Rule 1(10) of the CPC as

⁸ (2001) 8 SCC 97

⁹ 2022 SCC OnLine SC 29

¹⁰ 2022 SCC OnLine SC 283

¹¹ 2022 SCC OnLine Del 1274

introduced by the Commercial Courts Act and the recitals contained in the statement of truth filed by the petitioner with the written statement/counter claim.

27. No error of jurisdiction or other error warranting supervisory correction, in exercise of Article 227 jurisdiction of this Court, can be said to exist.

28. In view of the aforesaid, the Court does not find any error in the decision of the learned Commercial Court in rejecting the petitioner's application for permission to file additional documents. However, the Court does not express any opinion on any of the other observations contained in the impugned order dated 24th February, 2022.

29. The petition is accordingly rejected *in limine* in the aforesaid terms with no orders as to costs.

30. The pending applications also stand dismissed in the aforesaid terms.

C. HARI SHANKAR, J.

MAY 2, 2022

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