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

% Judgment delivered on: 14.12.2022

+ CM(M) 745/2022 & CM APPL. 33169/2022

M/S BAJAJ PLASTO INDUSTRIES & ANR. Petitioners

versus

M/S PENDO PLAST PVT. LTD. Respondent

Advocates who appeared in this case:

For the Petitioners : Mr. Utsav Jain, Advocate.

For the Respondent : Mr. Purvesh Buttan, Advocate with Mr. Ashish Rohlania and Mr. Fahad Imtiaz, Advocates.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The petitioner by way of present petition challenges the order dated 16.07.2022 passed by the learned Trial Court allowing the application under Order 11 Rule 1 sub Rule 4 of Civil Procedure Code, 1908, as amended by Commercial Courts Act, 2015 (hereinafter referred to as 'CPC') and permitted the respondent/Plaintiff to place on record additional documents.

2. Learned counsel appearing for the petitioner draws the attention of this Court to the provisions of Order 11 (1) (4) of the CPC to submit that the Language employed in the said clause would circumscribe the power of the plaintiff as well as the Court to permit such of those documents which accompany suits which are in the nature of 'urgent filing' and

additionally, that the declaration ought to be made clearly in the statement of truth which is to accompany the suit.

3. Learned counsel also emphasises on the time limit prescribed of 30 days in sub-rule 4 to emphasise that the respondent/ plaintiff ought to have taken steps within the time limit prescribed in clause 4. The respondent, not having done that, the Trial Court had no authority to grant any relief.

4. In order to buttress the arguments regarding 'urgent filing', learned counsel further drew the attention of this Court to the language employed in Section 12 A of the Commercial Courts Act, 2015, specially to sub-Section 1 of Section 12 A to impress upon this Court that word used 'urgent interim relief' in the sub-Section would have to be read in consonance with the words employed in sub-Rule 4 of Rule 1 of Order 11 of the CPC.

5. Learned counsel further drew the attention of this Court to the Chapter 10 of the Delhi High Court Rules relating to Interlocutory Applications to Rule 4, which is in respect of urgent listing, again to emphasise that the applicability of order 11 Rule 1 sub-Rule 4 of the CPC would have to be construed only and only if the suit filed is of an urgent nature.

6. Learned counsel submits that since the instant suit is a simple recovery suit, the same would not fall within the four corners of sub-Rule 4 of Rule 1 of Order 11 of the CPC. Learned counsel emphasises on the language which has been employed in Order 11 (1) (4) of the CPC, to submit that the additional documents ought to have been mentioned in the statement of truth and then subsequently, leave ought to have been taken from the Court.

7. Learned counsel submits that in the present case, the documents sought to be placed on record are conspicuous by their absence in the statement of truth and, therefore, the question of taking leave thereon does not arise at all.

8. Learned counsel submits that the only reason why the learned Trial Court had allowed the placement of additional documents on record, is the consideration of the extension of limitation as per the orders of the Supreme Court in Re: Cognizance for extension of limitation in Suo Moto Writ Petition (C) 3/2020 dated 10.01.2022, whereby the extension of time was granted up till February, 2022. This, learned counsel submits, would neither be a reasonable cause nor could it have been considered as such, since the basic ingredient which was concomitant to allow the application was missing.

9. Learned counsel also submits that it is not the case of the respondent that the documents were not in the possession of the respondent at the time of filing of the suit. In fact, it is admitted that the documents were very much in the possession of the respondent/ plaintiff even at the time of filing the suit.

10. In that view of the matter, learned counsel submits that the application could not have been and ought not to have been allowed and prays for quashing of the impugned order.

11. *Per contra*, learned counsel appearing for the respondent/ plaintiff submits that it is trite that the Civil Courts ought to consider the contents of the application rather than the nomenclature under which they are filed and as a sequitur, learned counsel submits that the learned Trial Court considered the application under Order 11 Rule 1 sub-Rule 5 of the CPC

and permitted the documents to be taken on record.

12. It is submitted that the contentions of the learned counsel for the petitioner regarding the rigours of 'urgent filing' is rendered otiose inasmuch as sub-Rule 5 is an exception to the rigours of sub-Rule 4 and as such, the strict construction of sub-Rule 4 would not be applicable to the cases falling within the ambit of sub-Rule 5.

13. Learned counsel draws the attention of this Court to para 2 of his application to show that the reasons which were placed before the Court were sufficient for it to consider allowing the application inasmuch as the contents thereof, are relatable to the outbreak of COVID-19 epidemic.

14. Learned counsel submits that it is undisputed that the suit was filed during the COVID period.

15. Learned counsel appearing for the respondent relies upon the judgment of a Co-ordinate Bench of this Court in ***Md. Islamuddin vs. S S Kapoor*** in CM (M) 1137/2022 decided on 01.11.2022 in para 9 and 11 to contend that in the similar circumstances, the Co-ordinate Bench had considered the allowing of filing of additional documents under Order 11 Rule 1 (5) in the wake of COVID-19 pandemic. He thus, submits that the impugned order ought not be interfered with.

16. In rebuttal, learned counsel appearing for the petitioner draws the attention of this Court to the statement of truth filed on record, especially to para 5 to submit that once having declared on oath that all the documents in his custody, power and possession, as on the date of filing of the suit, has been filed and coupled with the further statement that there is no other further documents in his power, possession, control or custody to be filed, the respondent/ plaintiff is precluded from resiling from the said

statement on oath.

17. Learned counsel relies upon the judgment of a Co-ordinate Bench of this Court in the matter of *Bela Creation Pvt. Ltd. vs. Anuj Textiles* passed in CM (M) 405/2022 on 02.05.2022 to submit that in the absence of any statement by the respondent/ plaintiff or finding by the learned Trial Court on the declaration in the statement of truth having found to be incorrect, the Court cannot take the additional documents on record.

18. Learned counsel further submits in rebuttal that the notice issued by the respondent as well as the suit filed, was during the COVID period and, therefore, in view of the fact that it is admitted that the documents sought to be placed on record now by the respondent/ plaintiff, were in fact in his possession during that period, no leniency ought to have been shown by the Trial Court under the impugned order.

19. Learned counsel for the respondent/ plaintiff draws the attention of this Court to the judgment rendered in the case of *Bela Creation Pvt. Ltd. (supra)* especially to para No. 2 of the judgment to submit that the said decision would not be applicable to the facts of the present case, inasmuch as, the fact as obtaining in *Bela Creation Pvt. Ltd. (supra)* was in respect of the period prior to COVID-19 pandemic.

20. This Court has considered the rival contentions and also considered the provisions of law as well as the judgments relied upon by both the parties.

21. This Court is of the opinion that the learned Trial Court has correctly applied the law as obtaining today and the impugned order is sustainable for the following reasons :-

(i) It is trite that the contents of the application govern the

consideration thereof, rather than the nomenclature under which the applications are filed. No doubt, learned counsel for the petitioner is right to the extent that the provisions contained in sub-Rule 4 of Rule 1 of Order 11 of the CPC may be construed strictly. However, the moment the provisions of sub-Rule 5 are applied, it automatically carves out an exception from the rigours of sub-Rule 4 and in that view of the matter, the application of sub-Rule 5 of Rule 1 of the Order 11 of CPC Act by the learned Trial Court is upheld.

(ii) So far as the reasonable cause, which has been noted by the learned Trial Court is concerned, it is true and as noted in *Md. Islamuddin (supra)*, that the period of COVID-19 pandemic was an extreme situation, which arose leading the Supreme Court to suo moto grant extension of limitation under extraordinary powers conferred by the Constitution upon it. Thus, the learned Trial Court did not commit any illegality or procedural irregularity in applying the principles and condoning the delay.

(iii) That apart, the facts in *Bela Creation (Supra)* was for a period prior to the COVID-19 pandemic and, therefore, not applicable to the facts of the case.

22. It is true that the COVID-19 pandemic was an extremely difficult period, as observed by the Supreme Court and the application by the learned Trial Court of the same to the facts of the present case is not without good reasons. Though the plaintiff may have had the documents in his possession, custody and power but the extraordinary circumstances prevailing during that period would over-ride any statutory rigours in any Act. This would also be in-consonance with the principles of fair play and justice.

23. In view of the above, this Court does not see any reason much less a justifiable reason to interfere with the impugned order passed by the Trial Court. The judgments relied upon by the learned counsel for the parties are taken on record.

24. The present petition is devoid of any merits and dismissed without any order as to costs.

TUSHAR RAO GEDELA, J

DECEMBER 14, 2022/nd

