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

+ CM(M) 957/2022 & CM APPL. 40329/2022

INDCON BOILERS LTD Petitioner
Through: Mr. Sujeet Kumar Gupta, Adv.

versus

MAEDA CORPORATION & ORS. Respondents
Through: Mr. Mayank Sapra, Mr. Aditya
Sharma and Mr. Avanish Kr. Singh, Adv.
for R-1 to 4

+ CM(M) 962/2022 & CM APPL. 40345/2022

PSA NITROGEN LTD Petitioner
Through: Mr. Sujeet Kumar Gupta, Adv.

versus

MAEDA CORPORATION & ORS. Respondents
Through: Mr. Mayank Sapra, Mr. Aditya
Sharma and Mr. Avanish Kr. Singh, Adv.
for R-1 to 4

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

J U D G M E N T (O R A L)
27.09.2022

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1. The orders impugned in these two suits have been passed on applications filed by the respondent in these petitions, Maeda Corporation Ltd. (hereinafter referred to as “Maeda”), under Order VIII Rule 1-A¹ of the Code of Civil Procedure, 1908. By the said

¹ 1-A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him. –



application, Maeda sought to place on record certain documents in addition to the documents filed by them with the written statement, filed in response to the suit instituted by PSA Nitrogen Ltd (“PSA”, hereinafter) and Indcon Boilers Ltd. (“Indcon”, hereinafter), the petitioners in these petitions.

2. Before proceeding further, it is necessary to point out that though the suits, in which the impugned orders have come to be passed, are registered as commercial suits, they are, in fact, non-commercial suits.

3. There are, in all, four registered suits, in which the impugned orders have been passed, two being suits instituted by Indcon and PSA against Maeda and the other two being counter claims by Maeda filed in the said suits which have been separately registered as suits.

4. The suits, as well as counter claims, are required to be registered as “non-commercial suits”, though they have been registered, and are proceeding, as “commercial suits”. This may be explained, with respect to these two petitions, thus:

(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to documents—

- (a) produced for the cross-examination of the plaintiff's witnesses, or
- (b) handed over to a witness merely to refresh his memory.



CM (M) 962/2022 (PSA Nitrogen Ltd. v. Maeda Corporation & Ors.)

5. PSA filed CS (OS) 1750/2015 before this Court, prior to enhancement of pecuniary jurisdiction of trial courts, for recovery of ₹ 37,01,686/- on 26th May 2015. Consequent on enhancement of pecuniary jurisdiction of trial courts, CS (OS) 1750/2015 was transferred to the court of the learned ADJ on 2nd December 2015 and was registered as CS 9404/2016. At that time, Section 12(1)² read with Clause (i) of Section 2(1)³ of the Commercial Courts Act treated any dispute which conformed to clause (c) of 2(1), the value of the subject matter in respect of which was not less than ₹ 1 crore, as a “commercial dispute”. CS 9404/2016 was, therefore, at that time of its original filing as well as at the time of its renumbering consequent to being transferred to the Court of the learned ADJ, a non-commercial suit. It was only thereafter that, by Section 4(ii)⁴ of the

² 12. **Determination of Specified Value. –**

(1) The Specified Value of the subject-matter of the commercial dispute in a suit, appeal or application shall be determined in the following manner—

(a) where the relief sought in a suit or application is for recovery of money, the money sought to be recovered in the suit or application inclusive of interest, if any, computed up to the date of filing of the suit or application, as the case may be, shall be taken into account for determining such specified value;

(b) where the relief sought in a suit, appeal or application relates to movable property or to a right therein, the market value of the movable property as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining such specified value;

(c) where the relief sought in a suit, appeal or application relates to immovable property or to a right therein, the market value of the immovable property, as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining specified value; and

(d) where the relief sought in a suit, appeal or application relates to any other intangible right, the market value of the said rights as estimated by the plaintiff shall be taken into account for determining specified value;

³ 2. **Definitions. –**

(1) In this Act, unless the context otherwise requires,—

(i) “Specified Value”, in relation to a commercial dispute, shall mean the value of the subject-matter in respect of a suit as determined in accordance with Section 12 which shall not be less than one crore rupees or such higher value, as may be notified by the Central Government.”

⁴ 4. **Amendment of Section 2. –** In Section 2 of the principal Act, in sub-section (1),—

(II) in clause (i), for the words “which shall not be less than one crore rupees”, the words “which shall not be less than three lakh rupees” shall be substituted.



Commercial Courts (Amendment) Act, 2018 that, w.e.f. 3rd May 2018, Section 2(i) of the Commercial Courts Act was amended to reduce the minimum pecuniary value of commercial suits from ₹ 1 crore to ₹ 3 lakhs. This amendment would not, however, affect CS 9404/2016 instituted by the petitioner against the respondent, as the relevant date for determining whether the suit would be treated as a commercial suit or non-commercial suit would, by operation of Section 12(i)² of the Commercial Courts Act, be the “date of filing”.

6. In the case of the suit instituted by the petitioner against the respondent, the suit was liable to be treated as a non-commercial suit not only on the date of filing but also on the date of its registration both before this Court as well as consequent to its transfer to the learned ADJ.

7. I may observe that the Division Bench of this Court as already held, in *Satyanarain Khandelwal v. Prem Arora*⁵, that the suit which were instituted prior to the amendment of the Commercial Courts Act with effect from 3rd May 2018 would be treated as commercial or non-commercial suits based on Section 2(i)³ of the Commercial Courts Act as it stood on the date of institution of the suit.

8. This issue is, therefore, no longer *res-integra*.

9. The respondent filed a counter claim in CS 9404/2016, which came to be registered in 2020 as CS(Comm) 45/2020 (in which the

⁵ 2022 SCC OnLine Del 2142



impugned order dated 7th May 2022 under challenge in CM(M) 962/2022 has been passed).

10. Reckoned on the basis of the date of its filing, it is clear that the counter claim of the respondent ought also to have been registered as non-commercial suit and not as a commercial suit.

11. The learned ADJ is directed, therefore, to ensure that CS(Comm) 45/2020 is renumbered as a non-commercial suit.

CM (M) 957/2022 (Indcon Boilers v. Maeda Corporation & Ors.)

12. Indcon filed CS (OS) 1752/2015 before this Court, prior to enhancement of pecuniary jurisdiction of trial courts, for recovery of ₹ 65,52,856/- in May 2015. Consequent on enhancement of pecuniary jurisdiction of trial court, CS (OS) 1752/2015 was transferred to the Court of the learned ADJ on 2nd December 2015 and was registered as CS 78/2016. Applying what has been noted hereinabove *mutatis mutandis*, CS 78/2016 was rightly registered as a non-commercial suit. It continues to stand registered as such, and has not been renumbered as a commercial suit.

13. The respondent filed a counter claim in CS 78/2016, which came to be registered in 2019 as CS (Comm) 87/2019 (in which the impugned order dated 30th May 2022 under challenge in CM (M) 957/2022 has been passed).

14. Reckoned on the basis of the date of its filing, it is clear that the



counter claim of the respondent ought also to have been registered as non-commercial suit and not as a commercial suit.

15. Inasmuch as the counter claim of the respondent was required to be treated as a non-commercial suit, the learned ADJ is directed to ensure that CS (Comm) 87/2019 is renumbered as a non-commercial suit.

The Issue in Controversy

16. Having thus cleared the air, with respect to registration of the suits and counter claims in which the impugned orders have come to be passed, one may advert to the actual issue in controversy.

17. As has already been noted towards the commencement of this judgment, the impugned orders dated 7th May 2022 (in CM (M) 962/2022) and 30th May 2022 (in CM (M) 957/2022) have come to be passed on applications filed by Maeda.

18. The latter order dated 30th May 2022 merely adopts the earlier order dated 7th May 2022.

19. Maeda, by its application under Order VIII Rule 1-A¹ of the CPC, sought to bring on record further documents, in addition to those which had been filed with their respective counter claims.

20. To appreciate the reason why the said documents were being



sought to be introduced, a brief glance at the dispute is necessary.

21. In response to the claim of the petitioner against the respondent, which related to alleged short-payment against work undertaken, the respondents, as the defendants in the suit, stated that, as the petitioner was not rectifying the defects in the work undertaken by it, Maeda claimed to have found it necessary to award the contract for the remaining work to Heat Max Engineering Company and Heat Max Projects Pvt. Ltd (collectively referred to, hereinafter, as “Heat Max”).

22. Maeda, therefore, sought to claim, from PSA in one case and Indcon in the other, the amounts that it had to expend for getting the remaining work done by Heat Max.

23. In the replication to the written statement, PSA/Indcon referred to certain approved isometric drawings. Maeda, in its application under Order VIII Rule 1-A¹ (which ought to have been under Order VII Rule 14 of the CPC) contended that the aforesaid Annexure-A was an enclosure to a letter dated 16th January 2014, which was written by Heat Max to the Chief Inspector of Boilers, Haryana seeking approval of the aforesaid Isometric drawings and permission to carry out the works.

24. This permission, it was submitted, had been granted by Chief Inspector of Boilers *vide* letter dated 23rd January 2014. Subsequently, it was contended, in the application filed by the respondent, that the Chief Inspector of Boiler, Haryana issued provisional certificates to



the two boilers manufactured by the respondent, in Form-V. As such, by the application, the respondent sought to place, on record, the letters dated 16th January 2014 and 23rd January 2014 as well as the aforesaid certificate issued by the Chief Inspector of Boiler, Haryana.

25. These details are identical in both the present petitions i.e. CM (M) 957/2022 and CM (M) 962/2022.

26. The application filed in CS (Comm) 45/2020 was allowed by the learned ADJ *vide* order dated 7th May 2022 which forms subject matter of challenge in CM (M) 962/2022.

27. The said order reads thus:

“07.05.2022

Present: Sh. Lalit Chauhan, Sh. Adiya Sharma and Sh. Manu Bajaj, Ld. counsels for plaintiff.

Sh. Devesh Kumara Malan Ld. counsel for defendant.

It is submitted that evidence is still pending before the Local Commissioner for recording of evidence.

During the pendency of evidence an application has been filed by the counsel for defendant/counter claimants for taking certain documents on record. Reply to the same is filed by plaintiff.

It is stated in the application that due to inadvertence the documents could not be filed. In reply it is submitted that these documents are not related to the transaction between the parties and hence not relevant. It is also submitted that the taking on record the said documents would delay the proceedings.



I have gone through the documents filed by the defendant. I am of the considered view that though these documents are belatedly filed, however still an opportunity will be given to the plaintiff to rebut these documents by way of cross-examination of the defendant's witness who will prove those documents. Moreover, taking on record these documents does not imply that these documents are either proved or admitted. Accordingly, application is allowed subject to cost of Rs. 10,000/- to be paid by the defendant to the plaintiff. Let evidence be concluded before the Local Commissioner.

Be listed for report of Local Commissioner/final arguments on 02.08.2022.”

28. The identical application, filed by the respondents in CS (Comm) 87/2019, was allowed merely following the allowing of the prayer in CS (Comm) 45/2020.

29. Regarding the power to allow additional documents to be brought on record, the law with respect to Order VII Rule 14 is no longer *res integra*. It has been a settled position in law that a liberal view is required to be taken, especially where the documents are not brought on record at a highly belated stage⁶. In the present case, in both the suits, the matter is yet at the stage of recording of plaintiff's evidence. Introduction of aforesaid documents on record, at this stage, would not result in any serious prejudice to either side.

30. Learned Counsel for the petitioner points out that the applications filed by the respondents do not make out any “sufficient

⁶ Chakreshwari Constructions Pvt. Ltd. V. Manohar Lal, (2017) 5 SCC 212; Kapil Kumar Sharma v. Lalit Kumar Sharma, (2013) 14 SCC 612; Sadhu Forging Ltd. v. M/s. Continental Engines Ltd., 2017 SCC OnLine Del 10039; Nishant Hannan v. South Delhi Municipal Corporation, 2014 SCC OnLine Del 4053;



cause” for permitting the documents to be brought on record at this stage.

31. In that regard, it is seen that in both the applications, the respondents have contended that, by inadvertence, the documents could not be brought on record, though references to other documents which are connected to them are contained in the written statements filed by the respondent.

32. Inadvertence has been held, in *Varun Pahwa v. Renu Chaudhary*⁷ to be sufficient as a ground to permit amendment of a Suit under Order VI Rule 17 of the Code of Civil Procedure, 1908. Equally, therefore, inadvertence, in given case, may be a valid and acceptable explanation for failure to file the documents with the written statement.

33. It is made clear that, this position of law applies only to non-commercial suits, and that applications for introducing additional documents filed in commercial suits, which are subjected to the rigour of Order XI Rule 1 of the CPC, as amended by the Commercial Courts Act, chart an entirely different course.

34. The order dated 7th May 2022 in CS (Comm) 45/2020, which forms subject matter of challenge in CM (M) 962/2022, has noted the ground urged in the application filed by the respondent, as well as the respondents’ contention that the documents were related to the

⁷ (2019) 15 SCC 628



disputed transactions and necessary for a holistic and complete adjudication of the lis.

35. The learned ADJ has also observed that the documents would have to be proved by the respondents through its witnesses and the petitioner would have an opportunity to question the witness in cross examination. Merely taking the document on record, it is noted by the learned ADJ, does not amount either to admission or proof thereof. As such, the learned ADJ has allowed the applications in both the cases, subject to costs of ₹ 10,000/- in each case.

36. The impugned orders being discretionary in nature, and given the fact that the jurisdiction of this Court under Article 227 of the Constitution of India is, even otherwise, considerably circumscribed, no occasion arises for this Court to interfere with the impugned orders.

37. The petitioners stand adequately compensated by costs in both these matters.

38. As such, both these petitions are dismissed.

C. HARI SHANKAR, J.

SEPTEMBER 27, 2022

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