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

+ CM(M) 965/2022 & CM APPL. 40534/2022, CM APPL. 40535/2022

NARESH ARNEJA

..... Petitioner

Through: Mr. Aatreya Singh and
Mr.Dhananjay Kumar Gupta, Advs.

versus

SH. ATUL GUPTA

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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

% **14.09.2022**

1. This petition under Article 227 of the Constitution of India assails order dated 1st April 2022 passed by the learned Senior Civil Judge in CS 1370/2017 (*Atul Gupta v. Naresh Arneja*) to the extent the said order dismisses an application filed by the petitioner under Order VIII Rule 1A(3) of the Code of Civil Procedure 1908 (CPC), to bring additional documents on record.

2. It is important to note that the documents were sought to be brought on record after plaintiff evidence (PE) had concluded and at the stage of defendant evidence (DE).

3. The application under Order VIII Rule 1A(3) of the CPC which has come to be dismissed by the impugned order makes for interesting reading. It reads, from beginning to end, thus:

**“MOST RESPECTFULLY SHOWETH:-**

1. That the above said matter is pending before this Hon'ble Court and the same is fixed for Defendant Evidence before the Hon'ble Court on 01.04.2022.
2. That there are certain documents which are required to be furnished before this Hon'ble Court for the proper adjudication of the suit.
3. That the defendant wants to place some additional documents on record before this Hon'ble Court. Hence, this application.
4. That no prejudice or loss may be caused to the plaintiff if the present application may be allowed

PRAYER

Therefore, it is humbly prayed before this Hon'ble Court that the court may be pleased to allow this application thereby taking on record the additional documents placed by the defendant.

And this Hon'ble Court may be pleased to pass such other orders.as deem fit and proper under the circumstances of the case.”

4. Order VIII Rule 1A(3) of the CPC reads thus:

“ORDER VIII

[Written statement, set-off and counter-claim]

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

- (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.”

5. A bare reading of Order VIII indicates that there is no vested right in a defendant to introduce, at any later stage, documents which ought to have been filed by the defendant with the written statement. Such documents may be received in evidence on behalf of the defendant, only with the leave of the Court.

6. On the circumstances in which such leave could be sought, the Supreme Court, in *Sugandhi v. P. Rajkumar*¹, held, in paras 8 to 10 of the report, thus:

“8. Sub-rule (3), as quoted above, provides a second opportunity to the defendant to produce the documents which ought to have been produced in the court along with the written statement, with the leave of the court. *The discretion conferred upon the court to grant such leave is to be exercised judiciously.* While there is no straitjacket formula, this leave can be granted by the court *on a good cause being shown by the defendant.*

9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come

¹ 2020 10 SCC 706



in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3).

10. Coming to the present case, the defendants have filed an application assigning cogent reasons for not producing the documents along with the written statement. They have stated that these documents were missing and were only traced at a later stage. It cannot be disputed that these documents are necessary for arriving at a just decision in the suit. We are of the view that the courts below ought to have granted leave to produce these documents.”

(Emphasis Supplied)

7. The learned SCJ has, while, rejecting the petitioner’s application, observed that the application did not disclose as to whether the documents, which were being sought to be introduced in evidence thereunder, were in possession of the petitioner, and if so, the date on which the petitioner came into possession thereof. As such, there was no material to indicate that the petitioner had exercised due diligence while filing documents with its written statement, so as to permit additional documents to be filed at a later stage.

8. Mr. Singh, learned Counsel for the petitioner submits that the considerations which the impugned order dated 1st April 2022 reflects as having persuaded the learned SCJ to reject the petitioner’s application are not germane to Order VIII Rule 1(A)(3) of the CPC.



9. Mr. Singh has relied, in support of the challenge to the impugned order, on the order dated 17th May 2022 passed by the Supreme Court in *Levaku Pedda Reddamma v. Gottumukkala Venkata Subbamma*², which reads thus:

“Issue notice.

Mr. Mahfooz Ahsan Nazki accepts notice on behalf of respondent No.1.

Leave granted.

The defendant Nos.2 to 5 are in appeal aggrieved against the order passed by the High Court affirming the order passed by the trial Court refusing to permit the appellant to produce additional documents in terms of Order VIII Rule 1 of the Code of Civil Procedure, 1908.

We find that the trial Court as well as the High Court have gravely erred in law in not permitting the defendants to produce documents, the relevance of which can be examined by the trial Court on the basis of the evidence to be led, but to deprive a party to the suit not to file documents even if there is some delay will lead to denial of justice.

It is well settled that rules of procedure are hand-maid of justice and, therefore, even if there is some delay, the trial Court should have imposed some costs rather than to decline the production of the documents itself.

Consequently, the appeal is allowed. The orders passed by the trial Court and the High Court are set aside. The appellants – defendant Nos.2 to 5 are permitted to file the documents and to prove the same in accordance with law.

Mr. Nazki states that the plaintiffs-respondents should be permitted to lead additional evidence, if any,

² Civil Appeal 4096/2022



on the basis of the documents now produced by the defendants. We accept the request. The Plaintiff shall lead additional evidence, if any, before the defendants are given an opportunity to lead evidence to rebut the evidence produced by the plaintiff.

Pending application(s), if any, also stand disposed of.”

10. *Levaku Pedda Reddamma*² holds that the learned Trial Court, in that case, ought not to have rejected the appellant’s request to introduce the additional documents, as it could have imposed costs and examined the relevance of the documents during trial. The order does not clearly indicate the grounds on which the request for production of documents was rejected, or the grounds urged in the application under Order VIII Rule 1(A)(3) of the CPC was preferred by the appellant in that case.

11. It appears from a reading of the order that the learned Trial Court had rejected the appellant’s application under Order VIII Rule 1 on the ground that the request was belated. The High Court affirmed the said order.

12. A reading of paras 8 to 10 of *Sugandhi*¹ reveals that the court is required to exercise leniency while dealing with application under Order VIII Rule 1A of the CPC seeking to introduce additional documents after the written statement had already been filed.

13. That being said, *Sugandhi*¹ also holds that good cause is required to be shown by the applicant seeking to introduce additional



documents. That cause must necessarily pertain to the reason for not filing the additional documents at an earlier point of time. At the very least, the application must contain an explanation, howsoever brief, as to why the documents had not been filed earlier and as to why the documents are relevant for adjudication of the *lis* in controversy.

14. In *Sugandhi*¹, for example, the Supreme Court has clearly noted that, in the application filed by the defendants under Order VIII Rule 1(A), cogent reasons for not producing the documents with the written statement had been adduced. The defendants had contended that the documents were missing and had been traced only at a later stage.

15. Where such an explanation exists, undoubtedly, para 9 of *Sugandhi*¹ requires the court to adopt an expensive and lenient attitude, *ex debito justitiae*, and not to disallow bringing into record of additional documents.

16. That, however, is not to say that, in the absence of any reason whatsoever, such an application can be allowed. The application under Order VIII Rule 1(A) of the CPC, filed by the petitioner in the present case, is delightfully non-speaking. It says nothing except that the petitioner desired to place the additional documents on record and that such placement would not prejudice the respondent. It does not give any explanation as to why the documents had not been filed by the petitioner earlier. It does not even purport to state that the documents were necessary for a complete adjudication of the case.



17. If such an application is to be allowed, it would lead to a situation in which a defendant would be entitled to place additional documents on record by merely averring that he desired to do so, with nothing more.

18. That would do complete violence not only to Order VIII rule 1(A)(3) of the CPC but also to principles enunciated in *Sugandhi*¹.

19. No exception can, therefore, be taken to the decision of the learned SCJ not to allow the application of the petitioner under Order VIII Rule 1(A) of the CPC.

20. The petition is accordingly dismissed in *limine*.

C.HARI SHANKAR, J.

SEPTEMBER 14, 2022

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