

\$~1

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

+ CM(M) 1137/2022 & CM APPL. 45868/2022

MD. ISLAMUDDIN

..... Petitioner

Through: Mr. Sanjeev Kumar & Mr. Ram
Kamal Prasad, Advocates.

versus

S S KAPOOR

..... Respondent

Through: Mr. Anupam Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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

01.11.2022

%

1. The order dated 26th September 2022, passed by the learned District Judge (Commercial Courts) in CS (Comm) 218/2021 (***Md. Islamuddin v. S S Kapoor***) under challenge in the present petition instituted under Article 227 of the Constitution of India, rejects an application of the petitioner under Order VII Rule 14 of the Code of Civil Procedure, 1908 ("CPC"), seeking to place certain documents on record in addition to those filed by the petitioner as the plaintiff. The documents were carbon copies of three invoices dated 9th June 2018, 27th July 2018 and 30th December 2018, and one hand written document dated 4th January 2018 allegedly executed by the respondent-defendant containing what, according to the petitioner, amounted to the admission of liability on the respondents' part.

2. The respondent challenged the veracity and genuineness of the said documents.

3. The plaint, in the suit instituted by the petitioner against the respondent was filed in January 2021 and documents were filed along with the plaint. Written statement was filed by the defendant, issues were framed and recording of evidence commenced. At the stage of cross-examination of DW-1 the petitioner moved the application under Order VII Rule 14 of the CPC in which the impugned order has come to be passed.

4. At the outset, it may be noted that the application of the petitioner ought not to have filed under Order VII Rule 14 CPC as the application was filed in a commercial suit. An application for additional documents, filed beyond 30 days of institution of a commercial suit, is required to be filed under Order XI Rule 1(5) CPC as amended by the Commercial Courts Act. However, the Hon'ble Supreme Court in *Sudhir Kumar @ S. Baliyan v. Vinay Kumar G.B.*¹, has held that an application for additional documents filed under Order VII Rule 14 CPC, though filed under the wrong provision, is entitled to be treated as an application under Order XI Rule 1(5) of the CPC as amended by the Commercial Courts Act. As such, the objection, in the impugned order of the learned Commercial Court, to that effect, has no substance.

5. Order XI Rule 1(5) CPC as amended by the Commercial Courts Act reads as under:

“(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.”

¹ 2021 SCC OnLine SC 734

6. Mr. Sanjeev Kumar, learned counsel for the petitioner has drawn my attention to an order passed by a coordinate bench of this Court in *Hassad Food Company Q.S.C. v. Bank of India*², wherein the coordinate bench of this Court, relying on the judgment of Supreme Court in *Madanlal v. Shyamlal*³, has held that the words “reasonable cause” employed in Order XI Rule 1 (5) of the CPC as requiring a liberal construction, with the latitude of the expression being wider than the expression “good cause” which, in turn, is wider than the expression “sufficient cause”.

7. The application filed by the petitioner is short, and the relevant passages thereof may be reproduced thus:

“1. That the plaintiff has filed the present suit which is pending before this Hon'ble Court and fixed for evidence on 02.09.2022.

2. That the present case is prepared and filed during the COVID-19 pandemic and due to such situation the counsel for the plaintiff had not met the plaintiff at the time of preparation of the Petition, therefore only some of the documents were supplied and filed as the remaining documents was not available with the Plaintiff at that time.

3. That the documents were with the staff of the Plaintiff who had been looking after the business of the Plaintiff and only at the time of evidence of plaintiff it was noticed that at the time of filing of the suit, some of the bills/invoice were not filed on record inadvertently. The said documents are very relevant for adjudication of the present case.

4. That the defendant had also gave a letter to the Plaintiff admitting his liability, which is also not filed on record.

5. The Plaintiff therefore seeks liberty of this Hon'ble Court to place the documents on record which are just and necessary for adjudication of the present suit.

6. That non filing of the said documents at the time of filing of the suit is neither intentional nor deliberate but to the abovementioned reason.”

² 2019 SCC OnLine Del 10647

³ 2002 (1) SCC 535

8. In *Sugandhi v. P. Rajkumar*⁴, the Supreme Court has held that the court is required to adopt a lenient view while considering an application for taking additional documents on record. The following passage from the said decision may be usefully reproduced:

“6. Rule 1-A of Order 8 CPC provides the procedure for production of documents by the defendant which is as under:

“1-A. *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 counterclaim, 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.”

7. Sub-rule (1) mandates the defendant to produce the documents in his possession before the court and file the same along with his written statement. He must list out the documents which are in his possession or power as well as those which are not. In case the defendant does not file any document or copy thereof along with his written statement, such a document shall not be allowed to be received in evidence on behalf of the defendant at the hearing of the suit. However, this will not apply to a document produced for cross-examination of the plaintiff's witnesses or handed over to a witness merely to refresh his memory. Sub-rule (3) states that a document which is not produced at the time of filing of the written statement, shall not be received in evidence except with the leave of the court. Rule 1(1) of Order 13 CPC again makes it mandatory for the parties to produce their original documents before settlement of issues.

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 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)."

9. The impugned order has not returned any finding on the sufficiency or otherwise of the cause shown by the petitioner for not filing the aforementioned documents with the plaint. Rather, the order has gone in great detail into the veracity of the documents of the invoices and the hand written documents that the petitioners sought to introduce by way of the application under consideration.

10. Mr. Sanjeev Kumar has correctly drawn my attention to the following passage from *Sudhir Kumar¹* in which the Supreme Court has clearly held that while examining the application under Order XI Rule 1(5) of the CPC the court is not entitled to pronounce on the correctness of the genuineness of the documents which the petitioner seeks to introduce:

"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.”

The Court is therefore, only required to examine whether there is sufficient cause for the documents not having been filed along with the plaint. The evidentiary or other value of the document vis-a-vis the controversy in issue in the plaint, is a consideration alien to Order XI Rule 1(5).

11. Significantly, all that the petitioner is required to show under Order XI Rule 1(5) of the CPC is whether the sufficient cause existed for the Petitioner having failed to file the additional documents *with the plaint*. If there is sufficient cause for the documents not been filed *with the plaint*, any subsequent or later delay in introducing the documents has not been regarded statutorily as a relevant consideration under Order XI Rule 1(5) of the CPC. In the present case, the failure to file the three invoices and the hand written documents along with the plaint has been sought to be explained by pointing out that the plaint was filed during the currency of the COVID-19 pandemic, during which period it was difficult to contact the counsel. Though the learned District Judge has not chosen to believe this contention, the law laid down by the Supreme Court in *Sugandhi*⁴ persuaded me to, in the interests of justice, to allow the documents which the petitioner sought to place, on record to be so placed, subject to costs of ₹ 15,000/- to be paid by the petitioner to the respondents within four weeks from today.

12. Needless to say, since additional documents have been sought to be placed on record, the respondent would also be entitled to file an additional or amended written statement to meet the said document.

Any such request if made shall be allowed by the learned Commercial Court.

13. This petition stands disposed of in the above terms, with no order as to the costs.

C. HARI SHANKAR, J.

NOVEMBER 1, 2022

ns

