

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY**  
**BENCH AT AURANGABAD**

**WRIT PETITION NO.12812 OF 2021**

M/S R. R. Kapoor (Engineers And Contractors)  
Through Its Partner Risshi Kapoor ...Petitioner

Versus

The State Of Maharashtra  
Through Secretary And Others ...Respondents

Mr. J.N. Singh, Advocate for the petitioner.  
Mr. S.N. Kendre, AGP for State.  
Mr. P.N. Khedkar, Advocate for respondent No. 4.

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**[CORAM : NITIN B. SURYAWANSHI, J.]**

**DATE : 7<sup>th</sup> SEPTEMBER, 2023**

**ORDER :**

1. Leave to correct prayer clause.
2. Petitioner is aggrieved by the order passed by Commercial Court, below Exhibits- 32 and 34, in Commercial Suit No. 1 of 2019.
3. Petitioner/plaintiff has filed suit for recovery of bill amount, deposit amount and damages, on 05.01.2018, in the Court of learned District Judge, Ahmednagar, which was numbered as Special Civil Suit No. 1/2018. Suit was transferred to the Commercial Court at Ahmednagar and registered as Commercial Suit No. 13/2019. Suit was then transferred to

Commercial Court at Shrigonda and was re-registered as Commercial Suit No. 1/2019. Suit proceeded without written statement of the defendants.

4. When the suit was posted for evidence on 16.02.2021, petitioner filed application Exhibit-32 seeking permission to produce original documents. According to the petitioner, xerox copies of the documents are already on record. Petitioner also filed application Exhibit-34 seeking permission to produce statement of truth in view of amendment in CPC applicable to the Commercial Courts Act, as per provisions of Order 6 Rule 15A read with Order 11 Rule 3 and Appendix-I. As the said amendment came into force on 03.05.2018, Trial Court rejected both the applications. Hence, the present petition.

5. Heard the learned advocate for the petitioner, learned Assistant Government Pleader for the State and learned advocate for respondent No. 4.

6. Learned advocate for the petitioner has urged that filing of statement of truth is required as per the amendment of Commercial Courts Act, 2015, which has come into effect on 03.05.2018 and therefore, Trial Court has ignored this aspect

and has refused fair opportunity to the plaintiff to contest his case on merits.

7. Learned advocate for respondent No. 4 on the other hand supports the impugned orders. He points out that amendment though came into effect on 03.05.2018, application is filed by the petitioner for the first time on 16.02.2021 i.e. after three years and therefore, petitioner is not entitled for the relief claimed in the petition.

8. Perused the writ petition memo, annexures and the impugned orders.

9. It is a matter of record that since filing of the suit, the suit is treated as commercial suit. Admittedly, at the stage of recording of evidence, petitioner/plaintiff has filed application Exhibit-32 seeking permission to produce original documents i.e. six letters. By application Exhibit-34, petitioner/plaintiff has sought permission to file statement of truth as per the amendment dated 03.05.2018. It is a matter of record that, the documents which plaintiff is seeking production of, are not mentioned in the plaint. There is no pleading in the plaint that these documents are in power, possession, control or custody of the plaintiff. Plaintiff has failed to file photocopies of these

documents along with the plaint.

10. Rule 14 of Order 7 reads thus;

***"14. Production of document on which plaintiff sue or relies.-(1) Where a plaintiff sues upon a document or relief upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.***

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

***(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."***

11. Order 13 Rule 1, reads thus;

***1. Original documents to be produced at or before the settlement of issues.-(1) The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed alongwith plaint or written statement.***

***(2) The Court shall receive the documents so produced:***

***Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.***

***(3) XXXX"***

12. From the facts of the present case, it is clear that the petitioner has failed to comply with the aforesaid provisions. Sub Clause 3 of Rule 14 of Order 7, provides that the 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. In application Exhibit-32, no reason is assigned by the petitioner as to why said documents were not presented alongwith the plaint and/or why their reference is not there in the plaint. Thus, no reasonable cause is disclosed in application Exhibit-32 for non disclosure of these documents in the plaint. It is not the case of the plaintiff that these documents were not in his power, possession, control or custody, at the time of filing of the plaint. In these facts, Trial Court is justified in rejecting the application Exhibit-32.

13. Impugned order passed by the Trial Court thereby rejecting the application Exhibit-34 is liable to be upheld as since beginning the suit filed by the plaintiff is tried as commercial suit. Though, there is substance in the contention of the plaintiff that amendment by which requirement of filing of statement of

truth is introduced is brought into force on 03.05.2018, fact remains that the present application is filed by the petitioner on 16.02.2021 i.e. after three years of filing of suit and there is no explanation on the part of the petitioner as to why such delay is caused. Since this application is filed at the time of recording of evidence, Trial Court has rightly rejected it.

14. Since the suit is tried as commercial suit since beginning, and as the petitioner has failed to make necessary compliance at the time of filing of the suit or at the time, when it was registered as commercial suit, petitioner is not entitled for the relief claimed in this petition. There is no illegality or perversity in the orders passed by the Trial Court. No case is made out by the petitioner to exercise extra ordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

**[NITIN B. SURYAWANSHI, J.]**