

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 1078 OF 2023

Digitech Electronics Systems Pvt. Ltd.

..Petitioner

Versus

Maestros Electronics & Telecommunications
Systems Ltd.

..Respondent

Mr. Gaurav Mehta a/w. Dhanashree Gaikawaiwari i/b. Bilawala & Co.
for Petitioner.

Mr. Siddharth Wakode for Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 14 MARCH 2023

PC :

1. The Petitioner, who was the original Plaintiff, has challenged the order dated 02/11/2022 passed by learned Judge, City Civil Court, Mumbai, Court Room No.32, in the Notice of Motion No.2768 of 2022 in Commercial Suit No.1100 of 2021. By the impugned order, the learned Judge rejected the Notice of Motion for permission and leave to file, produce and rely upon the additional documents at Sr.Nos.1 to 4, 6 to 18 and 24 which were filed with the list Exhibit 14.

2. Learned counsel for the Petitioner fairly accepted that, in

the affidavit filed in support of the Notice of Motion, there was no reason mentioned as to why the documents were not filed with the plaintiff. However, he submitted that the plaintiff was filed on 01/07/2021 and this Notice of Motion was filed on 26/07/2022. He submitted that, because of the situation which was prevailing due to spread of Covid-19, he could not produce those documents along with the plaintiff. However, this ground is not specifically pleaded in the affidavit in support of the Notice of Motion.

3. Learned counsel for the Petitioner submitted that, these documents are necessary, relevant and important documents. If production of these documents is allowed, no prejudice will be caused to the Respondent. He submitted that, he is willing to file an affidavit in support of his Notice of Motion showing the cause as to why the documents were not produced at the time of filing of the plaintiff.

4. Learned counsel for the Respondent supported the impugned order.

5. I have considered these submissions and I have also

taken into account the amended provision of O.11 of C.P.C. about the Disclosure, Discovery and Inspection of the documents. Sub Rules 3, 4 and 5 of Rule 1 are relevant and important. They are as follows:

- (3) The plaintiff shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody.

Explanation. - A declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix.

- (4) In case of urgent filings, plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath and subject to grant of such leave by Court, the plaintiff shall file such additional documents in Court, within thirty days of filing the suit, alongwith a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession, control or custody.
- (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 alongwith 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 alongwith the plaint.

6. While it is true that the Petitioner has not filed a supporting affidavit within the prescribed period mentioning the criteria laid down under these rules, the discretion was still with the Court to permit him to file additional affidavit.

7. In the interest of justice and taking into account the extraordinary situation of spread of Covid-19, I am inclined to permit the Petitioner to file additional affidavit in support of his Notice of Motion mentioning the reasons as required under those sub rules. The Trial Court, in the interest of justice, shall consider those grounds raised by the Petitioner.

8. Hence, the following order:

O R D E R

- i) The order dated 02/11/2022 passed in the Notice of Motion No.2768 of 2022 in Commercial Suit No.1100 of 2021, is set aside.

- ii) The said Notice of Motion is remanded back for fresh consideration.
- iii) The Petitioner is permitted to file additional affidavit in support of his Notice of Motion.
- iv) Learned Trial Court may impose suitable cost against the Petitioner for considering his Notice of Motion afresh.
- v) All the contentions are left open.
- vi) With these directions, the Petition is disposed of.

(SARANG V. KOTWAL, J.)