

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 5251 OF 2022

IN

COMMERCIAL SUIT NO. 316 OF 2020

Khanna Rayon Industries Pvt. Ltd.

...Applicant/Plaintiff

Versus

Swastik Associates & Ors.

...Defendants

- Mr. Sharan Jagtiani, Senior Advocate a/w Ms. Saurabhi Agrawal, Ms. Sheetal Shah, Mr. Jeyhaan Carnac and Ms. D.D. Bitra i/by M/s. Mehta & Girdharlal, for Applicant/Plaintiff.
- Mr. Ashish Kamat, Senior Advocate a/w Mr. Mohit Khanna, Mr. Paresh Shah and Ms. Leena Mirasee i/by M/s Shah & Sanghavi, for Defendant Nos. 1 to 3 and 5 to 8.

CORAM : MANISH PITALE, J.

DATE : 10th JULY, 2023.

P.C.:

1. In the light of the rival submissions, the question that arises for consideration in this application filed under Order VI Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC for the sake of brevity) for amendment of plaint in a commercial suit, is that when such a proposed amendment seeks to place on record documents, whether the rigors of Order XI of the CPC, as amended by the Commercial Courts Act, 2015, would apply and to what extent. Considering the specific mandate of the amended Order XI of the CPC applicable to Commercial Courts, whether the stringent requirements specified under the same can be a factor for

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consideration when the proposed amendment of the plaint in a commercial suit seeks to place on record documents that were admittedly in the power, custody, control or possession of the Plaintiff at the time of filing of the suit.

2. The Plaintiff in the present case filed the present suit, which is admittedly a commercial suit, seeking specific performance of a development agreement read with a deed of addenda executed between the parties. The controversy revolves around the entitlement of the plaintiff to certain parking spaces in the property, that are subject matter of the development agreement. The Applicant /Plaintiff is seeking amendment of the plaint in term of Exhibits “J” and “S” annexed to the application. As regards proposed amendment as per Exhibit “J”, the Plaintiff proposes to delete Defendant No. 4 and to add in his place Defendant Nos. 4a and 4b. The Plaintiff further seeks to add Defendant Nos. 9 and 10 after Defendant No. 8, also seeking amendment in the pleadings to justify such deletion and addition of Defendants. There is no serious dispute raised on behalf of the Defendants with respect to the proposed amendment as per Exhibit “J”.

3. The real dispute pertains to the amendment as proposed under Exhibit “S” annexed to the application. As per the original Exhibit “S”, the Plaintiff sought addition of sub paragraph (y) after

paragraph no. 5(x) in the original plaint and also sought addition of prayer clause a-1, seeking further specific relief in respect of the car parking spaces.

4. It is relevant that during the course of hearing of the present application, on 19th June, 2023, this Court expressed its opinion about not being inclined to allow amendment of the plaint and the prayer clause as proposed *vide* Exhibit “S” on behalf of the Plaintiff. In this situation, the learned Senior Counsel appearing for the Plaintiff, on instructions, submitted that an opportunity may be granted to substitute Exhibit “S” to place before this Court modified proposal to add sub paragraph No. (y) after paragraph no. 5(x) of the plaint. Accordingly, when this application came up for hearing, the modified proposed amendment as per substituted Exhibit “S” was pressed into service on behalf of Plaintiff. As per the modified proposal, sub paragraph No. (y) after paragraph no. 5(x) of the plaint was truncated and the proposed prayer clause (a-1) was completely deleted. In other words, the modified proposed amendment to the plaint stood reduced to a proposal to place on record two documents as Exhibits “M-1” and “M-2”, with the contents of the proposed sub paragraph paraphrasing the contents of the said documents proposed to be placed on record.

5. The document proposed to be placed on record at Exhibit

“M-1” is a letter dated 30th August, 2019 addressed by the Defendant No. 1 to the Plaintiff and the document sought to be placed on record at Exhibit “M-2” is a chart prepared by the Plaintiff as regards parking spaces utilized by Defendant No. 1. It is relevant to mention here that the amendment proposed as per the original Exhibit “S” had sought to place on record further two documents as Exhibits “M-3” and “M-4”, being floor plans of basement 1 and basement 2. But, this Court is not concerned with the same any more, as the Plaintiff now proposes to place on record only the aforesaid documents at Exhibits “M-1” and “M-2”.

6. A serious objection is raised on behalf of the Defendants even to the modified Exhibit “S” proposed for amendment on behalf of the Plaintiff, primarily on the ground that documents cannot be permitted to be placed on record in this manner while seeking amendment of the plaint, without satisfying the mandatory requirement of Order XI of the CPC, as amended and applied to commercial suits. It is in this backdrop that submissions have been made by the learned Senior Counsel appearing for the rival parties.

7. Mr. Sharan Jagtiani, learned Senior Counsel appearing for the Plaintiff submitted that the objection being raised on behalf of the Defendants to the proposed amendment is wholly misplaced because while considering the present application seeking amendment of the

plaint, this Court has to apply only the classic test applicable to amendments sought at the pre-trial stage under Order VI Rule 17 of the CPC. It is submitted that amendment of a plaint has to be considered on the touchstone of the requirements of Order VI Rule 17 of the CPC, as it is the only provision under which amendment can be sought. It was submitted that merely because the proposed amendment also sought to place on record certain documents, it could not be said that the principles governing amendment of pleadings under Order VI Rule 17 of the CPC would cease to apply and that only because in the present case this Court is concerned with a commercial suit, the settled principles of law governing amendment of pleadings would have to be given a go bye.

8. It was further submitted that if it was insisted that order XI of the CPC, as amended and made applicable to commercial suits, must apply on every occasion an application for amendment also seeks to place documents on record, it would lead to a situation where the law applicable to an amendment simplicitor without filing of documents would be different from an amendment which also seeks to place on record certain documents. According to the learned senior Counsel appearing for the Plaintiff, this would be wholly incongruous and therefore, unacceptable. In fact, it was submitted that this would amount to rewriting of the CPC, in so far as Order VI

Rule 17 thereof is concerned.

9. It was emphasized that the Commercial Courts Act led to specific amendments being incorporated in various provisions of the CPC, including Order XI thereof. Specific timelines were introduced for filing of written statement and other pleadings, with drastic consequences in case of violation of such timelines, with the object of expeditious disposal of Commercial Suits. But, Order VI Rule 17 of the CPC was left untouched and if the contentions raised on behalf of the Defendants were to be accepted, it would amount to an implied amendment of Order VI Rule 17 of the CPC. On this basis, it was submitted that the objections being raised on behalf of the Defendants deserve to be rejected and the application deserves to be allowed to the extent of modified and substituted Exhibit “S” proposed on behalf of the Plaintiff.

10. The learned Senior Counsel for the Plaintiff relied upon judgment of the Supreme Court in the case of *Nelson Motis vs. Union of India & Anr.*¹ and in support of the contention that when the language of the statute, in this case Order VI Rule 17 of the CPC, is clear, it ought to be given effect, irrespective of the consequences. Reliance in this regard, on the aspect of literal construction of a statute, was also placed on judgment of the Supreme Court in the case

¹ (1992) 4 SCC 711

of *T.N. State Electricity Board vs. Central Electricity Regulatory Commission & Ors.*². The learned Senior Counsel for the Plaintiff relied upon judgment of the Supreme Court in the case of *Sampath Kumar Vs. Ayyakannu & Anr.*³ for the proposition that pre-trial amendments should normally be granted and a liberal approach ought to be adopted by the Courts.

11. It was submitted that this Court ought to apply the said position of law in the context of Order VI Rule 17 of the CPC to examine whether the aforesaid amendment proposed on behalf of the Plaintiff was necessary to decide the real question in controversy between the parties. It was submitted that placing the said documents on record at Exhibits “M-1” and “M-2” was for the purpose of assisting this Court in deciding the real question in controversy between the parties. Reference was made to paragraph no. 5 (w) of the plaint, to contend that the Plaintiff had already stated about the Defendants having handed over 37 parking spaces in August, 2019 to the Plaintiff and that the document sought to be placed on record at Exhibit “M-1” was the letter dated 30th August, 2019, specifying the aforesaid 37 parking spaces. On this basis, it was submitted that the proposed amendment was also in the nature of elaborating pleadings that were already on record. It was submitted that no prejudice

² (2007) 7 SCC 636

³ (2002) 7 SCC 559

would be caused to the Defendants if such proposed amendment was granted and the documents were also permitted to be placed on record. In the application, the Plaintiff had explained that it was only due to oversight and inadvertence that such pleadings were not incorporated in the original plaint, thereby indicating that the proposed amendment could not be said to be *mala fide*.

12. The learned Senior Counsel for the Plaintiff further submitted that reliance placed on behalf of the Defendants on judgments of the Supreme Court and the Delhi High Court in the context of order XI Rule 1(5) of the CPC, as applicable to commercial courts, is misplaced as the amendment in the present case is sought obviously under Order VI Rule 17 of the CPC. On this basis, it was submitted that the present application deserved to be allowed.

13. On the other hand, Mr. Ashish Kamat, learned Senior Counsel appearing for Defendant Nos. 1, 2, 5 and 8 submitted that the proposed amendment, even as per modified Exhibit “S”, ought not to be granted because the attempt to place on record documents at Exhibits “M-1” and “M-2” at this stage must satisfy the test specifically laid down in Order XI Rule 1(5) of the CPC, as amended and applicable to commercial suits. It was submitted that merely because the present application was styled as an application for amendment under Order VI Rule 17 of the CPC, the rigors of Order XI

Rule 1(5) of the CPC, as amended and applicable to commercial suits, cannot be diluted. According to the learned Senior Counsel appearing for the said Defendants, there is no substance in the contention raised on behalf of the Applicant/Plaintiff that insisting upon the rigors being applied would create two classes of amendment applications before the commercial courts. Emphasis was placed on the objects and reasons for enacting the Commercial Courts Act and it was submitted that accepting the contentions raised on behalf of the Applicant/Plaintiff would militate against the aforesaid objects and reasons. On this basis, it was submitted that the present application, when it seeks to place on record documents that were admittedly in the power, custody, possession and control of the Applicant, must satisfy the requirement of Order XI Rule 1(5) of the CPC, as applicable to commercial courts.

14. It was submitted that the judgments relied upon by the learned Senior Counsel appearing for the Applicant could be of no assistance, for the reason that the general law pertaining to liberal approach to be adopted for pre-trial amendments cannot be disputed, but when a specific prayer is made for placing documents on record in a commercial suit, the rigors of Order XI of the CPC, as amended and applicable to commercial suits, must be applied.

15. It was submitted that if the requirement of Order XI Rule

1(5) of the CPC, as applicable to commercial suits is applied, the Applicant has to establish reasonable cause for non-disclosure of the said two documents along with the plaint. The only explanation offered on behalf of the Applicant is that due to inadvertence the documents could not be placed on record. Such a casual explanation cannot be accepted, under Order XI Rule 1(5) of the CPC. Reliance was placed on judgment of the Hon'ble Supreme Court in the case of *Sudhir Kumar alias S. Baliayn Vs. Vinay Kumar G.B.*⁴, wherein the Supreme Court examined the scheme envisaged under Order XI of the CPC, as amended and applicable to commercial suits and thereupon held that an explanation offered by the Applicant/Plaintiff therein that the documents sought to be subsequently placed on record, were not earlier placed on record because they were voluminous, could not be accepted as a reasonable cause for non-disclosure/filing along with the plaint.

16. The learned Senior Counsel appearing for the aforesaid Defendants relied upon judgments of the Delhi High Court in the case of *Rishi Raj Vs. Saregama India Ltd.*⁵, *Anita Chhabra & Ors. Vs. Surender Kumar*⁶, *Saregama India Limited Vs. Zee Entertainment Enterprises Limited*⁷ and *Nitin Gupta Vs. Texmaco Infrastructure &*

4 (2021) 13 SCC 71

5 2021 SCC OnLine Del. 4897

6 2022 SCC OnLine Del. 3089

7 2023 SCC OnLine Del. 2437

*Holding Limited*⁸.

17. It was further submitted that if the contentions raised on behalf of the Applicant were to be accepted, Order XI of the CPC, specifically amended and applied to commercial suits, would be rendered ineffective, which cannot be permitted. Reliance was placed on judgment in the case of *State of Rajasthan Vs. Gopi Kishan Sen*⁹. It was further submitted that Commercial Courts Act, being a special statute bringing about specific amendments to the CPC, including in Order XI thereof, ought to prevail over the general provision for amendment under Order VI Rule 17 of the CPC. In support of the said proposition, reliance was placed on judgment of the Supreme Court in the case of *Ethiopian Airlines Vs. Ganesh Narain Saboo*¹⁰

18. Heard learned Senior Counsel for the rival parties and perused the record. Although the application seeks amendment of the plaint under Order VI Rule 17 of the CPC, even the proposed amendment as per modified Exhibit “S” seeks to place on record documents. The proposed document at Exhibit “M-2” is a nothing but a chart based on certain claims being made by the Plaintiff, while Exhibit “M-1” is a letter dated 30th August, 2019, which was admittedly in the power, possession, control and custody of the Plaintiff at the time of filing of the suit. The amendment to the plaint,

⁸ 2019 SCC OnLine Del. 8367

⁹ 1993 Supp (1) SCC 522

¹⁰ (2011) 8 SCC 539

as sought by the Plaintiff by adding sub paragraph No. (y) after paragraph no. 5(x), is nothing but paraphrasing of the contents of the letter dated 30th August, 2019.

19. There can be no quarrel with the proposition that the Court has to be liberal when amendment is sought at the pre-trial stage and if the proposed amendment is necessary to determine the real question in controversy between the parties, such an amendment would in normal course be granted. This test has to be applied to the proposed amendment in the present case also. But, when the Plaintiff intends to place on record documents in the present suit, which is admittedly a commercial suit governed by the provisions of the Commercial Courts Act and consequently by the provisions of the CPC as amended by the said Act, such a proposed amendment has to be tested on the touchstone of Order XI of the CPC as amended and made applicable to proceedings under the Commercial Courts Act. In other words, it has to satisfy a twin test.

20. The Applicant/Plaintiff is not justified in claiming that such an approach would lead to two classes of amendments in the context of commercial suits. The Court cannot be oblivious of the objects and reasons for which the Commercial Courts Act was enacted. The statement of objects and reasons of the Commercial Courts Act specifically refers to the need for speedy disposal of high

value commercial disputes. It is to achieve the said object that various provisions of the CPC, including Order XI thereof, have been amended and made applicable to commercial suits. Therefore, the Commercial Courts Act, being a special statute, must operate with full rigor in respect of commercial suits. It cannot be said that the rigors introduced in procedural law i.e. the CPC as per the Commercial Courts Act can be ignored because Order VI Rule 17 of the CPC has not been amended in the context of commercial suits. If such an approach is adopted, an application, which in pith and substance is an application relatable to Order XI of the CPC, as applicable to commercial suits, can masquerade as an application for amendment under Order VI Rule 17 of the CPC.

21. In other words, if the approach canvassed on behalf of the Applicant is accepted, the Applicant i.e. Plaintiff would be able to avoid the mandatory requirement of Order XI Rule 1(5) of the CPC, as applicable to commercial suits, of establishing reasonable cause for non-disclosure of a document along with the plaint. The Applicant could simply annex documents to an application under Order VI Rule 17 of the CPC and avoid the rigor of Order XI of the CPC, as applicable to commercial suits. This cannot be permitted, as it would run counter to the objects and reasons for enactment of the Commercial Courts Act and the specific amendments brought about in the CPC.

22. It also cannot be said that if the contentions raised on behalf of the Applicant herein are rejected, Order VI Rule 17 of the CPC, when applied to applications for amendment filed in commercial suits, would stand impliedly amended. There is no question of Order VI Rule 17 of the CPC being impliedly amended when the Court insists upon applying provisions of the CPC specifically modified by the Commercial Courts Act, in tune with the objects and reasons for which the said Act has been enacted. In such situations the plaintiff must satisfy the twin test of Order VI Rule 17 of the CPC and Order XI Rule 1(5) of the CPC, as amended and made applicable to commercial suits.

23. In a given case, the Court could allow an amendment of a commercial suit if such amendment is found to be necessary for deciding the real question in controversy between the parties, but if the proposed amendment is coupled with a prayer for placing on record documents that were in the power, possession, custody or control of the plaintiff, but were not filed with the plaint, the Court would be bound to apply the rigor of Order XI of the CPC, as amended and made applicable to commercial suits.

24. If the broad proposition canvassed on behalf of the Applicant in the present case is accepted, the documents that were

not filed with the plaint in a commercial suit would be brought on record through the back door, along with an application for amendment under Order VI Rule 17 of the CPC, giving a go bye to the requirement of Order XI Rule 1(5) of the CPC, as amended and made applicable to commercial suits.

25. There is substance in the contention raised on behalf of the Defendants that if the argument of the Applicant is accepted, the provisions of the Commercial Courts Act and the CPC, as amended and made applicable to commercial suits, will be rendered ineffective. Such an interpretation would render statutory provisions, enacted specifically with a clear object, ineffective and otiose. In the context of commercial suits, the general provision of Order VI Rule 17 of the CPC for amendment of pleadings has to be read harmoniously with the provisions of the CPC specifically amended by Commercial Courts Act, including Order XI of the CPC. To that extent, the Defendants are justified in relying upon judgment of the Supreme Court in the case of *State of Rajasthan Vs. Gopi Kishan Sen (supra)*.

26. It is also a settled position of law that special statutes enacted later in point of time trump prior general statutes. In the present case, the Commercial Courts Act, having been enacted in the year 2015 and the specific amendments introduced in the CPC and made applicable to commercial suits, must trump the general

provisions applicable to suits. Therefore, the Defendants are justified in relying upon judgment of the Supreme Court in the case of *Ethiopian Airlines Vs. Ganesh Narain Saboo (supra)*. In any case, as noted hereinabove, an interpretation that avoids conflict and promotes harmony has to be preferred and accepted.

27. In this context, when the judgments relied upon by the Applicants are perused, it is found that plain and literal interpretation and construction of provisions is recommended in the judgments of the Supreme Court in the case of *Nelson Motis vs. Union of India & Anr. (supra)*, as also *T.N. State Electricity Board vs. Central Electricity Regulatory Commission & Ors. (supra)*. There can be no quarrel with the said proposition. This Court is of the opinion that even if the said rule is applied to Order VI Rule 17 of the CPC, no violence is done to the plain and literal meaning of the said provision when applied to commercial suits, for the reason that when the proposed amendment of a commercial suit seeks to introduce documents, the rigor of Order XI of the CPC, as amended and made applicable to commercial suits, does apply. By doing so, the plain and literal interpretation of Order VI Rule 17 of the CPC is not affected in any manner.

28. Reliance was placed on judgement in the case of *Sampath Kumar Vs. Ayyakannu & Anr. (supra)* on behalf of the Plaintiff in the

context of liberal approach to be adopted by the Courts when amendment is sought at pre-trial stage. There can be no quarrel with the said proposition, but, when amendment of a commercial suit is sought, coupled with introduction of documents on record, the rigor of Order XI of the CPC, as amended and made applicable to commercial suits, does come into play. This is clear from the fact that the requirement of Order XI of the CPC, as amended and made applicable to commercial suits, applies with full rigor at any stage of the proceedings in commercial suits. Therefore, the liberal approach at pre-trial stage is not an argument that can assist the Applicant (Plaintiff) in the present case.

29. Thus, it becomes clear that the application for amendment in the present case is to be considered, even in the context of proposed amendment as per modified Exhibit “S”, whereby the Applicant proposes to place on record documents, on the basis of the twin test under Order VI Rule 17 and Order XI of the CPC, as amended and made applicable to commercial suits. The relevant portion of Order XI of the CPC, as amended and made applicable to commercial suits, reads as follows:

“1. Disclosure and discovery of documents. - (1) Plaintiff shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint,

including:-

- (a) documents referred to and relied on by the plaintiff in the plaint;*
- (b) documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the plaint, irrespective of whether the same is in support of or adverse to the plaintiff's case;*
- (c) nothing in this Rule shall apply to documents produced by plaintiffs and relevant only -*
 - (i) for the cross-examination of the defendant's witnesses, or*
 - (ii) in answer to any case set up by the defendant subsequently to the filing of the plaint, or*
 - (iii) handed over to a witness merely to refresh his memory.*
- (2) The list of documents filed with the plaint shall specify whether the documents in the power, possession, control or custody of the plaintiff are originals, office copies of photocopies and the list shall also set out in brief, details of parties to each document, mode of execution, issuance or receipt and line of custody of each document.*
- (3) The plaint 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 reply 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) The plaint shall set out details of documents, which the plaintiff believes to be in the power, possession, control or custody of the defendant and which the plaintiff wishes to reply upon and seek leave for production thereof by the said defendant."*

30. A bare perusal of the above quoted provision shows the

mandatory requirement for the Plaintiff to place on record list of documents and photocopies of all documents in its power, possession, control or custody at the time of filing of the suit. In urgent filings, the Plaintiff can seek leave to rely on additional documents, with such additional documents also required to be filed within thirty days of filing of the suit as per Order XI Rule 1(4). In the present case, the said provision is not applicable and the only provision under which the Applicant can place on record a document which was in its power, possession, control or custody at the time of filing of the suit but was not filed along with the plaint, is Order XI Rule 1(5) of the CPC, as applicable to the commercial courts. The said provision mandatorily requires the Applicant/Plaintiff to establish a reasonable cause for non-disclosure of the document along with the plaint.

31. The Supreme Court in the case of *Sudhir Kumar alias S. Baliayn Vs. Vinay Kumar G.B. (supra)* has referred to the strict requirement of Order XI Rule 1(5) of the CPC in the context of commercial suits and after referring to such strict requirement, the Supreme Court held in the said case that the Plaintiff therein could not be permitted to contend that it had reasonable cause for non-disclosure/filing of the documents along with the plaint, on the ground that the documents were voluminous. In a series of judgments i.e. *Rishi Raj Vs. Saregama India Ltd. (supra)*, *Anita*

Chhabra & Ors. Vs. Surender Kumar (supra), Saregama India Limited Vs. Zee Entertainment Enterprises Limited (supra) and Nitin Gupta Vs. Texmaco Infrastructure & Holding Limited (supra), the Delhi High Court has applied the rigor of Order XI Rule 1(5) of the CPC in commercial suits in various circumstances to examine as to whether the Plaintiffs therein had made out reasonable cause for non-disclosure of documents with the plaint. It was found that when the Plaintiff failed to place on record proper reasons and reasonable cause, permitting additional documents to be placed on record at any stage, although they were in the power, possession, control or custody of the Plaintiff, would make a complete mockery of Order XI of the CPC, as made applicable to commercial suits. It was found that reasonable cause would have to be specifically pleaded and only when good cause was made out that the Plaintiff could be permitted to place on record such documents at a later stage. It was held in the said judgments that leniency in such matters would run counter to the very object and purpose for which such amendments in the CPC were introduced by the Commercial Courts Act.

32. This Court agrees with the views expressed by the Delhi High Court in the aforementioned judgments, particularly for the reason that they are in tune with the aforesaid judgment of the Supreme Court in *Sudhir Kumar alias S. Baliayn Vs. Vinay Kumar*

G.B. (supra). Applying the said position of law to the application filed on behalf of the Plaintiff in the present case, it is found that the only reasons stated in the application for failure to place on record the documents, proposed to be placed on record by way of amendment, were “oversight” and “inadvertence”. The application is devoid of any pleadings showing reasonable cause for non-disclosure of the said documents with the plaint as is mandatorily required under Order XI Rule 1(1) of the CPC, as applicable to commercial suits. Such casual reasons cannot be accepted. There is no dispute about the fact that the documents proposed to be placed on record on behalf of the Applicant were very much within the power, possession, control and custody of the Applicant when the suit was filed.

33. Before parting with this matter, it would be relevant to refer to a judgment of a learned Single Judge of this Court in the case of *Jayalaxmi Janardhan Walawalkar & Ors. Vs. Lilachand Laxmichand Kapasi & Ors.*¹¹, wherein this Court was required to consider the question as to whether power under Order I Rule 10 or Section 151 of the CPC could be invoked for adding parties who were legal representatives of a deceased party, when the suit had abated against such a party and an application under Order XXII Rule 9 of the CPC for setting aside abatement was not filed. This Court held that abatement takes places if a party to a suit dies and an application

¹¹ 1998 (3) MhLJ 618

for substitution is not made within time and that such a legal consequence cannot be set at naught indirectly, by invoking either the provision of Order I Rule 10 or Section 151 of the CPC. It was specifically held that the provision of Order XXII of the CPC cannot be negated by indirectly making an application after lapse of time, either under Order I Rule 10(2) or Section 151 of the CPC. The interplay of two provisions of the CPC was analyzed in the aforesaid manner, in the said judgment of this Court. The aforesaid view of the learned Single Judge of this Court was followed in the subsequent judgment of a Division Bench of this Court in the case is *Madhukar Ramchandra Keni Vs. Vasant Jagannath Patil & Ors.*¹². This Court has referred to the aforementioned judgments only to the highlight that the Court can analyze interplay of two provisions of the CPC itself and that the two provisions have to be read in such a manner that the effect of one is not indirectly negated by the other.

34. In the present case, it is found that the application for amendment filed on behalf of the Applicant is essentially an application seeking to place on record additional documents, masquerading as an application for amendment of the plaint. In a commercial suit, for the Applicant (Plaintiff), to place on record additional documents that were in its power, possession, control or custody, but were not filed with the plaint, can only be placed on

¹² 2013 (4) MhLJ 403

record after meeting the requirement of Order XI Rule 1(5) of the CPC, as applicable to commercial suits. It is this directly applicable provision that must be satisfied by the Applicant (Plaintiff) in this commercial suit and it cannot be indirectly achieved by filing an application under Order VI Rule 17 of the CPC, thereby circumventing the rigor of Order XI Rule 1(5) of the CPC, as applicable to commercial suits. To that extent, the aforementioned judgment of the learned Single Judge in the case of *Jayalaxmi Janardhan Walawalkar & Ors. Vs. Lilachand Laxmichand Kapasi & Ors.*(supra) and that of the Division Bench in the case of *Madhukar Ramchandra Keni Vs. Vasant Jagannath Patil & Ors.* (supra) become relevant.

35. This Court has also considered the contents of proposed sub paragraph No. (y) after paragraph no. 5(x) sought to be added by way of amendment. The Defendants are justified in contending that the contents are nothing but paraphrasing of the documents now sought to be brought on record on behalf of the Applicant (Plaintiff). Even otherwise, the proposed amendment as per modified Exhibit “S” cannot be said to be necessary for deciding the real question in controversy between the parties.

36. But, as noted hereinabove, the amendment proposed at Exhibit “J”, can be allowed as there is no serious objection raised in that context on behalf of the Defendants.

37. Accordingly, the application is only partly allowed, by permitting the Applicant (Plaintiff) to amend the plaint as per proposed amendment at Exhibit “J”, while the proposed amendment at Exhibit “S” is rejected.

38. The aforesaid amendment be carried out, within two weeks from today. Re-verification is dispensed with.

39. The application stands disposed of in above terms.

(MANISH PITALE, J.)