



A.Nos.2988, 2989 & 2990 of 2023

in

C.S.No.692 of 2017

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P.T. ASHA, J.

After the argument of the learned counsel for the plaintiff was heard on 23.03.2023, the applicant/defendant come forward with a submission that they have filed an application for producing additional documents and sought time to produce the same. The matter was thereafter adjourned to 19.06.2023 for arguments or for filing application.

2. They have now taken out the following applications for receiving additional documents:-

i). Application No.2988 of 2023 has been filed seeking leave to mark the file notings pertaining to the extension of time granted to the respondent/plaintiff as an Additional document.

ii). Application No.2989 of 2023 has been filed to reopen the evidence of D.W.1.



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iii). Application No.2990 of 2023 has been filed to recall

D.W.1 for the purpose of marking the said document.

3. A common affidavit has been filed in respect of all these applications. In the affidavit filed in support of the said applications, the deponent has contended that the decision of the General Manger (Engineering) to levy compensation of a sum of Rs.43,01,382/- for a delay of 58 days was taken after elaborate discussions which is evident from the various file notings at different levels. The deponent would submit that the notings are both in Hindi as well as in English and that by oversight the said notings had failed to be marked and therefore they may be permitted to be marked. The file notings in question have also been annexed to the said applications which relate to the dates 29.11.2013, 04.02.2014, 06.02.2014, 14.02.2014 and 01.11.2016.

4. A common counter has been filed in which the plaintiff/respondent would state that the cross-examination of P.W.1 had been closed as early as in January 2020 and the defendant had



chosen not to let in any evidence (oral as well as documentary) and the matter was posted for filing written arguments even as early as on 17.03.2020. Thereafter, both sides had filed their written arguments. Meanwhile, due to the onset of the Covid-19 Pandemic, argument could not be advanced and ultimately the matter was listed on 23.03.2023 at 2.15 p.m. for the arguments on both sides.

5. It is stated in the counter that the plaintiff's sides argument was completed on 23.03.2023 and the defendant had sought time till 05.04.2023. On 05.04.2023, the learned counsel for the defendant had informed the Court that they had given a change of vakalat and the subsequent counsel had sought time to prepare and hence the matter was adjourned to 13.04.2023 at 2.15 pm. On 13.04.2023, the applicant/defendant had informed that they were moving an application to mark additional documents and on this premise, they had taken time and ultimately these applications were numbered only on 19.06.2023 which would itself go to show that the only intention on the part of the defendant is to drag on the proceedings.



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6. It is also stated in the counter that the applications have been filed under a wrong provision of law i.e. Order XI, Rule 13 of the O.S Rules read with Section 151 of CPC whereas, the same ought to have been filed under the provisions of Order XI, Rule 1(10) of the amended CPC. The respondent/plaintiff would submit that a reading of the provisions of Order XI Rule 1(10) of the CPC would show that it is only in the case of a reasonable cause being shown which was beyond the control of the applicant/ defendant that the applications could be moved. In the instant case, the file notings are between the years 2013 and 2016 which was very much available to the applicant /defendant much before the institution of the suit.

7. It is also contended that there was no reference to these internal notings in the written statement and therefore, in the absence of a pleading and reasonable cause being shown, the applications deserve to be dismissed.



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8. Mr. Su.Srinivasan learned counsel appearing on behalf of the applicant/defendant would submit that the document namely, the file notings were very vital to prove that the decision to claim compensation was not a spur of the moment decision but a well thought out one. He would submit that no prejudice would enure to the plaintiff if the same is ordered.

9. Per contra, Mr. P.J.Rishikesh, learned counsel appearing on behalf of the plaintiff/respondent would submit that the defendant has successfully prolonged the proceedings for nearly 3 years after the matter was posted for arguments in the year 2020 and even after the Covid-19 Pandemic, when the Courts had reopened, the applicant/defendant had not taken out the applications and it is only in June 2023 that the same has been moved. He would submit that under the Commercial Courts Act every suit has a time line for disposal and even if additional documents have to be filed the applicant has to prove as to why these documents were not filed at the earliest point in time. He would submit that the applicant has not been able to prove the same.



10. In support of his arguments, the learned counsel appearing on behalf of the plaintiff/respondent would rely upon the judgement of this Court reported in **(2023) 2 CTC 322 – Bollieni Developers Ltd. Vs. S.Sailendra Kumar and Ors.** apart from relying upon the two judgments of the Delhi High Court reported in **2016 SCC Online Del 4279 - Societe DES Products Nestle S.A. & Anr. Vs. Essar Industries & Ors.** and **2022 SCC Online Del 1366 - Bela Creation Pvt. Ltd. Vs. Anuj Textiles.**

11. Heard the learned counsel on either side.

12. The suit in question is before the Commercial Division where as contended by the counsel for the respondent, time lines have been prescribed at every stage for the disposal of the suits. The order sheet in the above suit would clearly indicate that though the matter was posted for written argument as early as in the year 2020, the applicant/defendant has filed these applications only in the month of June 2023 and the only reason given for filing the said applications is as follows:-



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" It is submitted that the aforesaid decision of the General Manager (Engineering) was based on elaborate discussion by way of various notes at different level and after considering in every aspects with regard to extension of time upto 16.01.2013 levy of compensation of Rs.43,01,382/- was levied on the decision taken that the delay of 58 days are unjustified. This file notings contains both Hindi and English versions. However, the file notings containing the discussion with regard to grant of extension of time, due to oversight it was not marked as defendant exhibit before this Hon'ble Court."

13. Therefore, it is the contention of the applicant that these documents have not been filed on account of an oversight. The written statement filed by the applicant does not make reference to these file notings. Order XI Rule 1(10) of the CPC clearly states that the defendant cannot be allowed to rely on documents which were in his possession and which has not been disclosed in a written



statement/counter-claim except by leave of Court and such leave would be granted only if reasonable cause for the non-disclosure is set out. As already submitted, in the instant case, the plaintiff has not given any reason except for stating that by oversight the same has not been filed. It is also to be noted that the defendant has not entered the witness box to give evidence either oral or documentary.

14. The Hon'ble Delhi High Court in the judgment referred to by the learned counsel for the plaintiff namely ***2016 SCC Online Del 4279 - Societe DES Products Nestle S.A. & Anr. Vs. Essar Industries & Ors*** has held that reasonable cause referred to in Order XI Rule 1(10) of the CPC necessarily refers to a cause which was outside the control of the petitioner and which prevented the petitioner from filing the same into Court. The applicant/plaintiff has not given any reasonable cause for the non-filing of these documents further the applicant/defendant had already stated that they have no evidence to adduce. Therefore, the applicant cannot be allowed to produce the documents that too at such a belated period.



in 2016 SCC Online Delhi 4279 –*Societe DES Products Nestle*

S.A. & Anr. the learned judge has held as follows:-

10. Though Courts have undoubtedly been liberal in past in allowing documents to be filed, even at a late stage, beyond the stage prescribed in law for filing thereof, but I am of the view that the said view needs to be changed specially in the light of the coming into force of the Commercial Courts Act, the whole purport whereof is to expedite the disposal of such suits and when certain edge has been given to the said suits in the manner of disposal thereof and which differentiation and advantage, if the said suits were not to be treated differently or did not form a distinct class, would be held to be arbitrary and discriminatory. A litigant with a claim which would not classify as a commercial dispute would certainly then be entitled to contend that no priority should be given to commercial suits as is purported to be done under the Commercial Courts Act.



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11. The principle which prevailed with the Courts earlier, for allowing documents even at the late stage viz. of the litigant should not suffer for the fault of his advocate or for being not advised to file documents at the correct stage and which principle had evolved in the context of mofussil jurisdiction, where the litigants were uneducated and not aware of their rights, cannot certainly be applied to suits of commercial men and commercial concerns who do not suffer from any such handicap.

12. Applying the said reasoning and finding the suit to be of 1993 vintage and not finding any justification for the defendants No.4&5 to file documents at this stage and yet further finding that allowing such additional documents to be taken on record would endlessly delay the trial, inasmuch as an opportunity will then also have to be given for proof of



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the said documents and which proof would entail examination of a number of witnesses, I am not inclined to allow the additional documents to be taken on record.

16. In one of the Judgements of this Court reported in **(2023) 2 CTC page 322 – Bollieni Developers Ltd. Vs. K.Sailendra Kumar and Ors.**, the learned Judge was dealing with a similar case where the trial had concluded and the plaintiff had advanced his argument and the 2nd defendant had also argued in part and after which the application for additional document had been filed. The learned Judge relying upon the Judgment of the Hon'ble Supreme Court reported in **(2013) 14 SCC 1 – Bagai Construction Thr. Its Proprietor Mr.Lalit Bahai Vs. Gupta Building Material Store** has observed as follows:-

"The law laid down by the Hon'ble Apex Court in the above said case law make it clear that the petition seeking leave of the Court to produce additional



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documents at a belated stage cannot be allowed for mere asking but the applicant must make out a case for granting leave. In other words the applicant must satisfy the Court that he was prevented from producing the documents which were in his possession at the time of delivery of his pleadings or at least at the time of trial. In the absence of any explanation for his failure to produce the documents which were in his custody, even at the time of delivery of pleading, it is not open to the applicant to seek leave that too at the time of arguments.

17. Therefore, in the light of the above discussion, I see no merits in the applications for receiving additional documents, recalling and reopening of evidence of D.W.1 as the same has been filed belatedly and it appears that the same has been made with the intention to protract the proceedings.



WEB COPY 18. Accordingly, the above applications are dismissed. No costs.

19. Post the matter 'for arguments' on 29.08.2023.

04.08.2023

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