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

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Reserved on: 13th July, 2023

Date of Decision: 13th September, 2023

+ **CM(M) 1072/2023 & CM APPLs. 34943-44/2023**

BHUTANI AND COMPANY PRIVATE LIMITED Petitioners

Through: Mr. Rajat Aneja and Mr. Amit
Mehta, Advocates

versus

VIAS DEV

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The present petition filed under Article 227 of the Constitution of India impugns the order dated 21.01.2023, passed by the Additional District Judge-02 (Commercial Court), South-East District, Saket Courts, New Delhi ('Trial Court'), in CS (COMM) No. 7/2018 titled as "**Vias Dev Vs. M/s Bhutani and Company Pvt. Ltd.**" ('commercial suit') whereby, the Trial Court, allowed the Respondent's application filed under Order VII Rule 14 read with Section 151 Code of Civil Procedure, 1908 ('CPC') and enabled the Respondent, to bring additional documents on record in the commercial suit.

1.1. The Petitioner herein is the defendant and the Respondent herein is the plaintiff in the commercial suit. The commercial suit has been filed for recovery of Rs. 11,71,107/- along with interest at 18%.

***Brief facts***

2. It is stated that the Respondent had provided lace work services to the Petitioner from the year 2012 till 2017, in pursuance to which Respondent had raised invoices to the tune of Rs. 19,26,107/-.

2.1. It is stated that there exists no dispute regarding the invoices raised from 2012 until September 2015 and the claim for pending amount of Rs. 11,71,107/- is purportedly for the work carried out from September 2015 till 2017. It is the case of the Petitioner that no amount is due and payable to the Respondent and the entire payment has been made.

2.2. It is stated that the Respondent relying on the alleged pending amount of Rs. 11,71,107/- filed two false compliant cases under the Negotiable Instruments Act, 1881, bearing C.C. No. 13525/ 2018 for the Cheque No. 608770 and C.C. No.13289/2018 for the Cheque No. 608768, in two (2) separate jurisdictions at Saket Courts; and also filed a commercial suit, bearing C.S. (Comm.) No. 7/2018.

2.3. It is stated that on 21.09.2021, the amended written statement was filed by the Petitioner along with an application for condonation of delay and the same was allowed by the Trial Court *vide* order dated 21.01.2023.

2.4. It is stated that the Respondent filed an application under Order VII Rule 14 of CPC to bring on record additional documents i.e., Invoice No. 051 dated 03.08.2015 and the ledger maintained by the Respondent, along with replication.

2.5. It is stated that the Respondent has alleged in the application that the Invoice no. 051 is in the custody of both the parties.

2.6. It is stated that the Trial Court erred in allowing the said application *vide* impugned order 21.01.2023 without considering the submissions of the



Petitioner and considering the law, which restricts the plaintiff in the commercial suit from filling documents at this belated stage in the proceedings.

Arguments of the Petitioner

3. Mr. Rajat Aneja, the learned counsel for the Petitioner states that the Trial Court failed to appreciate that pursuant to the admission in the cross examination dated 06.03.2019 and 19.08.2019 of the Respondent, in the criminal complaint proceedings which proved that the outstanding amount had already been received by the Respondent herein; it was thereafter that Respondent deliberately, in order to build a case for himself in the commercial suit has tried to bring the said additional documents on record.

3.1. He states that the Trial Court has neither looked into the arguments made by the Petitioner nor considered the judgments given, since the Trial Court has not even recorded the defence of the Petitioner in the impugned order dated 21.01.2023.

3.2. He has relied upon the judgment dated 02.05.2022 of this Court in CM(M) No. 405/2022 titled as ***Bela Creation Pvt. Ltd. v. Anuj Textiles 2022:DHC:1772***, has held that:

"23. Moreover, as the learned Commercial Court correctly held, the written statement and counter-plaint were accompanied by a Statement of Truth, in which it was specifically stated thus:

6. I say that all documents and the power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the defendant company has been disclosed and copies thereof next with the list of documents filed with the written statement/counter claim, and that the defendant does not have any other documents in its power, possession and control or custody."

In the absence of any averment to the effect that the aforesaid declaration, contained in the Statement of Truth accompanying the written statement and



counter-plaint filed by the petitioner, was incorrect, the learned Commercial Court was justified in holding that additional documents, which were in the custody of the petitioner at the time of filing the written statement, could not be permitted to be introduced at a later stage. "Reasonable cause", within the meaning of Order XI Rule 1 (10) of the CPC, as amended by the Commercial Courts Act, cannot extend to negligence in filing of documents before the Court. "Reasonable cause", necessarily, must refer to a cause which was outside the control of the petitioner, and which prevented the petitioner from filing the concerned documents alongwith the written statement."

3.3. He has also relied upon the judgment of the Supreme Court titled as ***Sudhir Kumar @ S. Balyan v. Vinay Kumar G.B, 2021 SCC Online SC 734***, whereby it has been held that while seeking leave of the court to rely on documents which were in the power, possession, control or custody of the plaintiff therein and have not been disclosed along with the plaint or within the extended period set out in Order XI Rule 1 (4), the plaintiff has to establish the reasonable cause for non-disclosure with the plaint.

3.4. He states that the Trial Court has failed to appreciate that the Respondent in his application under Order VII Rule 14 has culled out no reason or reasonable explanation for non-production of the Invoice no .051, which has been produced at this later stage.

4. This Court has considered the submissions of the learned counsel for the Petitioner and perused the record.

5. The suit has been filed by the Respondent for recovery of Rs. 11,71,107/- from the Petitioner alongwith interest. The details of the invoices, which form the basis of the commercial suit; have been enlisted at paragraph '3' of the amended plaint. The commercial suit is based on Invoice nos. 302, 309, 320, 211 for the year 2015; Invoice no. 319 for the year 2016 and Invoice no. 212 for the year 2017.

6. The Petitioner herein filed its written statement on 20.09.2021 to the



aforesaid amended plaint.

6.1. In the said written statement, the Petitioner made a tabular representation of the payments made against each of the invoices.

6.2. The Petitioner contended that amounts towards each of the invoices stands paid and relied upon payments made through cash and bank transfers.

7. The Respondent filed its replication to the said written statement and in this replication; the Respondent took a stand that the seven (7) entries pertaining to bank transfers as reflected in the written statement pertain to Invoice no. 51 for the year 2015, which was not the subject matter of the claims, raised in the plaint.

7.1. While taking the said stand in the replication, the Respondent also sought to place on record the said Invoice no. 051 alongwith his replication. The Respondent filed the application under Order VII Rule 14 for bringing on record the said Invoice no. 51 alongwith the replication itself on 14.09.2022.

7.2. The Petitioner herein elected not to file any reply to the said application though it remained pending before the Trial Court and was duly served on the Petitioner herein. This application, which remained pending on Board since 14.09.2022 was taken up for consideration by the Trial Court on 17.01.2023 and reserved for orders.

8. The Petitioner had filed an application under Order VII Rule 11 CPC on 20.09.2021 seeking rejection of the plaint on the ground that there exists, no cause of action in favour of the plaintiff and against the defendant.

8.1. Pertinently, in the reply filed to the said application under Order VII Rule 11, the Respondent herein as early as on 16.03.2021 took the identical



stand that the payments referred to by the Petitioner do not pertain to the invoices, which are subject matter of the plaint.

8.2. It was stated in the reply that the said payments pertain to Invoice no. 051 dated 03.08.2015. Therefore, the stand of the Respondent herein with respect to the Invoice no. 051 dated 03.08.2015 and the stand that the bank transfers pertain to the said invoice was placed on record as early as on 16.03.2021 prior to the completion of the pleadings in this matter.

9. Therefore, in the replication which was filed on 14.09.2022, the Respondent duly pleaded the said stand and additionally sought leave of the Court to place on record the Invoice no. 051 dated 03.08.2015.

10. The Trial Court in its impugned order as well, was persuaded by the fact that the Respondent has filed the said document on record without any delay alongwith the application. The operative part of the order reads as under: -

"I have considered arguments advanced by the Ld. Counsel for the parties and gone through the record.

The plaintiff has filed the present suit for recovery of Rs. 11,71,107/- for unpaid invoices against the defendant. The chronology of the case shows that, it was initially filed and listed before the court of Ld. ADJ-02, 'South-East, Saket, New Delhi, however, by virtue of order Ld. Principal District and Sessions Judge, South-East, Saket bearing Order no. 31 dated 17.11.2020, the matter was transferred to this court. The contention of the plaintiff is that the need and occasion to file the documents arose only after the written statement was filed by the defendant. There is no delay as the replication has been filed and the documents were also filed along with an application. Issues have not been framed. Therefore; keeping in view the legacy of this case having transition from the court of Ld. ADJ-02, South-East, Saket to this court, the right of the plaintiff in the interest of justice for bringing documents aforesaid on record may not be dosed particularly, in view of the fact when the- relevancy of the documents is already elaborated in the replication dated 18.07.2019 on record. Hence, this application is allowed subject to cost of Rs.5,000/- to be paid by the plaintiff to the defendant on next date of hearing.

Put up this matter for case management hearing, marking of documents



and further proceedings for 10.02.2023.”

11. A perusal of the stand taken by the Respondent in the replication while relying upon Invoice no. 051 dated 03.05.2015 shows that Respondent is clarifying its stand on the defence raised by the Petitioner in the written statement.

12. In the opinion of this Court, the reliance placed on the said document by the Respondent is not contrary to its pleadings in the suit. The issue of permitting the plaintiff to file documents alongwith its replication in the commercial suit has been considered by this Court in several judgements and the Court has permitted the plaintiff to file said documents. In fact, provisions of Order 11 CPC as amended by Commercial Courts Act, 2015 and more specifically Order 11 Rule 1(1)(c)(ii) of CPC therein contemplates that the plaintiff will be entitled to file on record documents to answer the case set up by the defendant.

12.1. In this regard, it would be appropriate to refer to the judgement of this Court in (i) ***Hassad Food Company Q.S.C. & ANR. vs. Bank of India & Ors.***; 2019/DHC/5253 (ii) ***Khurmi Associates (P) Ltd. vs. Maharishi Dayanand Co-Operative Group Housing Society, 2022 SCC OnLine Del 1011*** (iii) ***Bennet Coleman & CO. Ltd. vs. Arg Outlier Media Pvt Ltd & Ors.***; 2023/DHC/001726.

12.2. Further replying upon the judgment of this Court in ***Bennet Coleman*** (Supra) the Court held that the additional documents are permitted to be taken on record on the ground that the additional documents are in support of the pleadings and issues are yet to be framed in the suit. The relevant extract of the judgment reads as under:



11. The judgments in **Hassad Food Company** (supra), **Mahesh Chaudhri** (supra) and **Nitin Gupta** (supra) were considered by me in **Khurmi Associates (P) Ltd. v. Maharishi Dayanand Co-Operative Group Housing Society**, 2022 SCC OnLine Del 1011. Relying upon the judgments in **Hassad Food Company** (supra) and **Mahesh Chaudhary** (supra), the additional documents were permitted to be taken on record on the ground that issues were yet to be framed in the suit and the documents were in support of the pleadings of the plaintiff company.

12. The facts in the present case are very similar to the facts in **Khurmi Associates** (supra). Issues are yet to be framed in the suit. It is an admitted position that the additional documents were filed on behalf of the plaintiff on the same date as the replication. A perusal of the pleadings in the suit would also show that the aforesaid documents sought to be filed are not contrary to the pleadings of the plaintiff in the suit. In my considered view, the aforesaid documents would be relevant for the adjudication of the present suit.

(Emphasis Supplied)

13. The learned counsel for the Petitioner has relied upon the judgement of this Court in **Bela Creation Pvt. Ltd. v. Anuj Textiles** (Supra).

13.1. In the said case, the plaintiff therein sought leave of the Court to place on record additional documents at the stage, when its witness PW-1 was being cross examined by the defendant and the issues had already been framed.

13.2. However, in the case, at hand, as noted above, the Respondent herein has filed the document alongwith his reply to Order VII Rule 11 CPC application and with his replication without any delay, therefore, the stage at which the Respondent herein sought permission to file the document is distinct.

14. Therefore, in the facts of this case, this Court finds that there is no error in fact and law in the impugned order.

14.1. The impugned order dated 21.01.2023 as per the Petitioner's own admission was to its knowledge on 10.02.2023. However, the present petition has been filed on 10.07.2023, after a period of almost five (5)



months suffers from delay and latches.

14.2. This Court also finds that the challenge to the said order is an afterthought due to the aforesaid delay in approaching the Court.

14.3. The Petitioner was duly served with the application for placing on record the additional documents on 14.09.2022. However, the Petitioner elected not to file any reply to the said application, which is also a factor, which belies the opposition to documents, which are now raise the grounds set out in this petition.

14.4. As noted above, this Court in any event finds that the application has been rightly allowed in view of the fact that it was filed by the Respondent without any undue delay and the Respondent has also shown reasonable cause for placing on record the additional documents.

15. Accordingly, the present petition is dismissed. Pending applications, if any, stand disposed of.

16. It is, however, made clear that nothing said in this order is an expression of opinion on the correctness of the defence set up by the Respondent in his replication on the basis of the Invoice No. 051 dated 03.05.2018. The merits of the said contentions will be examined by the Trial Court on its own merits during trial.

MANMEET PRITAM SINGH ARORA
(JUDGE)

SEPTEMBER 13, 2023
rhc/asb/hp