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

Date of decision: 09.08.2023

\+ CM(M) 1134/2023

SHRI RADHA ENTERPRISES THROUGH ITS PROPRIETOR SMT. SHASHI SHARMA & ANR. ..... Petitioners

Through: Mr. Kunal Kalra and Mr. Ankit Bhutani, Advocates

versus

M/S TANDOORI VIBES THROUGH ITS PARTNER MD. ZAINUL & ANR. ..... Respondents

Through: Mr. Karanjot Singh Mainee and Ms. Shreya Gupta, Advocates with Ms Tanu Mehra, AR of Respondents

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CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 05.06.2023 passed by District Judge, Commercial Court-03, Patiala House Courts, New Delhi ('Commercial Court') in CS (COM.) No. 151/2021 titled as ***Tandoori Vibes v. Shri Radhe Enterprises & Anr.***, whereby the Commercial Court dismissed the Petitioners application filed under Order VIII read with Order XI of the Code of Civil Procedure, 1908 ('CPC'), as amended by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 ('the Act of

2015') filed on 05.06.2023 for taking on record additional documents.

1.1. The Petitioners herein are the defendants and the Respondents herein are the plaintiffs, in the commercial suit.

1.2. The Respondents herein filed a suit seeking decree against the Petitioners herein and in favour of the Respondents, for declaring the Franchise Agreement dated 30.03.2018 executed between the parties as void on grounds of fraud and misrepresentation. In the said suit Respondents also sought a decree of recovery of Rs. 58,80,000/- and a decree of damages against the Petitioner No.1 for the loss of business opportunity on grounds of illegal consideration, fraud and misrepresentation.

2. The learned counsel for the Petitioners states that though the pleadings are complete in this matter, issues have not been framed in the suit. He states that on 13.10.2022 an application was filed by the Respondents under Order VII Rule 14 CPC for filing documents along with replication was allowed; and similarly on 14.12.2022 an application filed by the Petitioner herein under Order VIII CPC read with Order XI CPC as amended by the Act of 2015 for filing additional documents was also allowed.

2.1. He states that the additional documents, which are sought to be placed on record are necessary for proving the defence of the Petitioners and in this regard, he relies upon the pleas raised in preliminary objection no. 6 and in paragraph 6 of reply on merits in the written statement.

2.2. He states that though the written statement was filed on 04.10.2021 the additional documents could not be placed on record 'inadvertently'. He states that some of the documents are old and were not traceable at the time of filing the written statement; and have been traced out recently.

3. The learned counsel for the Respondents has entered appearance and

states that the application filed by the Petitioners on 05.06.2023, which is under consideration has not been filed in good faith.

3.1. He states that the Respondents herein had initially filed an ordinary civil suit on 26.10.2018 for recovery of monies along-with interest. He states that the Petitioners herein filed written statement in the 1st suit on 21.02.2019 and also filed counter claim in the said suit.

3.2. He states that the said 1st suit was withdrawn by the Respondents herein and a fresh plaint (2nd suit) was filed under the Act of 2015 in 2021 and the 2nd suit is a commercial suit governed by the provisions of Act of 2015 and the Code of Civil Procedure as amended by Act of 2015 to apply to a commercial suit.

3.3. He states that in the commercial suit the Petitioner filed his written statement on 04.10.2021 along-with all the documents in support thereof. He states that the written statement was accompanied by the Statement of Truth, wherein the Petitioner as per the mandate of Order VI Rule 15A of CPC as amended by the Act of 2015 and Appendix-I of the Act of 2015, made the statutory declaration that all documents in their power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated have been disclosed and copies thereof annexed and there is no other document in their power, possession, control or custody.

3.4. He states that, however, it is a matter of record that Petitioners thereafter filed an application for filing additional documents under Order VIII CPC read with Order XI CPC as amended by Act of 2015, which was allowed by the Commercial Court on 14.12.2022. He states that the said additional documents pertained to the Respondent and therefore the Respondent did not object to the same in the interest of expediency.

3.5. He states that however, the aforesaid facts evidences that the Petitioners has had sufficient opportunities from 2019 to 2022 to collect documents in support of the defence raised in the written statement in this 2nd commercial suit. He states that therefore the plea of inadvertence and untraceable documents is not genuine and cannot be accepted as sufficient grounds for permitting the defendant to file additional documents. He states that the Respondent disputes the veracity of the documents sought to be produced.

3.6. He states that Respondents herein have filed an application seeking summary judgment under Order 13A of the CPC as amended by Act of 2015. He states that the said application has remained pending for eight (8) months and arguments have been addressed by the parties on seven (07) separate dates before the Trial Court.

3.7. He states that on 05.06.2023, when the said application was listed for the last hearing, the Petitioners herein moved the application dated 05.06.2023 under consideration for placing on record additional documents.

3.8. He states that ex-facie the said documents had all been in existence prior to the institution of the 1st suit. He states that since the documents were already in existence the Petitioners have failed to justify the non-filing of the said documents with the written statement and even on 14.12.2022 when the first application for additional documents was filed. He states that the documents pertaining to one M/s Sunen International find no mention or reference in the pleas taken in the written statement.

3.9. He relies upon the judgment of the learned single judge of this Court in ***Bela Creation (P) Ltd. v. Anuj Textiles, 2022 SCC OnLine Del 1366*** to contend that the Petitioners herein have not shown any reasonable cause within the meaning of Order 11 Rule 1 (10) of CPC as amended by Act of

2015 to justify the delay in not filing the additional documents.

4. This Court has considered the submissions of the parties and perused the record.

5. The additional documents which the Petitioners wants to place on record are as under:-

(i) Statement of Shop under hypothecation to Indian Overseas Bank by the defendant dated 30.04.2018
(ii) Receipt dated 23.04.2018 issued by Sunen International.
(iii) Statement of Bank Account of Indian Overseas Bank from 01.04.2017 to 01.10.2018.
(iv) Estimate/invoice dated 10.04.2018 of Sunen International.
(v) Copy of Agreement dated 11.08.2016 between Lotus Business Innovation Pvt Ltd and M/s Shree Radhe Enterprises.
(vi) Bank Statement of defendant for the period of 01.04.2016 to 04.11.2016.

6. The parties admitted that document at serial no. (v) is already on record and to that extent, the prayer in the application was superfluous and requires no determination.

7. The Petitioners in the application have given three (3) reasons for not filing the aforesaid additional documents along with written statement i.e., (i) documents were not traceable at the time of filing of the written statement; (ii) documents are old; and (iii) documents have been recently found.

7.1. The 1st suit was filed on 26.10.2018. The 2nd commercial suit was filed on 28.01.2021. The parties have therefore been in litigation since 2018. The documents which are enlisted with this application are therefore not old as ex-facie the documents came into existence in 2018.

7.2. The contention that the said documents were not traceable is also without any merit. The documents are serial nos. (i), (iii) and (vi) as per the stand of the Petitioner are admittedly in the custody of the banker of the Petitioner. The documents are serial no. (iii) and (vi) infact, originate from the banker. Therefore, if in the opinion of the Petitioners herein, the said documents were relevant to substantiate its defence, it could have been obtained from the banker and placed on record along with written statement.

7.3. The contention that documents were not traceable is a bald averment and cannot be accepted in view of submission made by the Petitioner *qua* declaration made by the Petitioner in his statement of truth.

7.4. With respect to documents pertaining to Sunen International at serial no. (ii) and (iv); similarly, the said documents originate from the custody of a 3rd party i.e., Sunen International. If the Petitioners believed that the said documents are relevant the same could have been obtained by the Petitioners from Sunen International to file with the written statement. It would be relevant to mention that the Respondent has disputed the veracity of the said documents.

7.5. The aforesaid discussion shows that the Petitioner has been unable to satisfy this Court that the Petitioners had no means of obtaining and placing these additional documents with the written statement. Each of the said documents were readily available to the Petitioners.

8. The learned counsel for the Petitioners during the course of argument relied upon the following extracts of written statement to justify reliance on the additional documents pertaining to Sunen International at serial no. (ii) and (iv) and the document at hypothecation filed with Indian Overseas Bank at serial no. (i):

> " ***<u>PRELIMINARY OBJECTIONS</u>***
> ……..
> *6. That the present suit filed by the plaintiff is an abuse of the process of the law and the same has been filed only to extort money from the defendants. It is submitted that the defendants are the tenant situated at M – 13, Connaught Place, New Delhi and was carrying out the business under the name and style of M/s Sri Radhe Enterprises. That the defendants were having*

*the franchisee of the renowned chain of restaurants namely Nirula's. That the defendants were carrying out the business from the tenanted premises and was holding a very good reputation in the said vicinity. That the defendants were running their franchisee of Ms Nirula's by investing their huge amount and they were also earning handsome profit to tune of Rs 150000/- per month from the said business. That Ms Tanu Mehra approached defendants through one broker and has shown the rosy picture of the brand allegedly claimed to be owned by the plaintiff and has alleged that the brand Tandori Vibes is known abroad in the market of restaurants in a broad and has further induced defendants to enter into the franchisee agreement by making the tall promises that defendants will earn huge profit as compared to the profit earned by them by running the franchisee of Nirula. **<u>That defendant got trapped by the plaintiff and the result thereof defendant have also incurred huge amount on dismantling the existing restaurant and further by spending huge amount to tune of Rs. 6,000,00/ by giving new interior as required by the plaintiff in the said premises</u>**. **<u>That it is the defendants who have suffered a huge loss due to the plaintiff because on one side they have spread huge amount of Rs 6 lakhs due to the plaintiff and on the other side they have closed their running business of restaurant from which they were earning Rs. 1,50,000/- per month.</u>** The rental agreement between the defendants and their landlord is attached herewith. The copy of the franchisee agreement between defendants and Nirula is attached herewith."*

<u>REPLY ON MERITS</u>

……..

*6. Para 6 of the plaint is wrong and denied. It is denied that the plaintiff was represented that defendant no.1 was the owner of the premises. It is denied that the plaintiff was represented that defendant no.1 was not only the owner but was also running another Franchisee of another restaurant and has not masking enough profit. **<u>It is submitted that the defendants have revealed the fact that they are running the Franchisee of Nirula Restaurant.</u>** It is submitted that the plaintiff who induced the defendants by making false tall promises of providing huge profits to the defendants and induced them to leave the Franchise of Nirula's Agreement and switch to the Franchisee Tandoor Vibes. Needless to state that defendants earns the immense reputation and was fetching the huge amount of profit from the Franchise of Nirula and **<u>he has also invested the huge amount in interiors, furnitures and fixtures.</u>** Apart from the franchisee fee. That the plaintiff illegally and wrongfully induced the defendant and resultantly, the defendants have invested again huge amount with the plaintiff. **<u>The fixtures and furniture of the defendant lying at the shop which get prepared at the cost of the defendant. The cost of the furniture has been ascertained by the bank time and again</u>**."*

9. The judgment of this Court in ***Bela Creation (P) Ltd.*** ***(supra)*** after

considering the law settled by the Supreme Court in ***Sudhir Kumar v. Vinay Kumar G.B., (2021) 13 SCC 71*** has held as under: -

> *"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."*
>
> *24. 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 along with the written statement.***
>
> *25. In these circumstances, the decision of the learned Commercial Court not to allow the placing of additional documents by the petitioner, on record, cannot be faulted. No occasion exists for this Court to interfere therewith.*
>
> *26. In this context, one may also note the fact that the peripheries of the jurisdiction vested in this Court under Article 227 of the Constitution of India are well defined. This Court, exercising jurisdiction under Article 227, does not sit in appeal or revision over the decision of the court below. Nor can this Court, in legitimate exercise of its Article 227 jurisdiction, deal with the litigation pending before the court below in a manner different from the manner in which the court below has chosen to deal with it, unless the manner in which the court below has dealt with the situation calls for supervisory correction.* ***The Article 227 court supervises; it does not monitor****. One may refer, in this context, with advantage, to the judgments in Estralla Rubber v. Dass Estate (P) Ltd., Garment Craft v. Prakash Chand Goel and Puri Investments v. Young Friends & Co., the relevant passages of which I have attempt to extract in my recent decision in Lucina Land Development Ltd. v. Union of India."*
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> (Emphasis Supplied)

10. In view of the settled law and the discussion herein , this Court is of the opinion that the Petitioners have failed to show 'reasonable cause' within the meaning of Order 1 Rule 10 CPC as amended by the Act of 2015 for not filing the additional. The said documents on the own showing of the Petitioners were to their knowledge at the time of filing of the written statement and were also easily accessible to the Petitioners, as these documents were to be obtained from the banker of the Petitioners or the alleged vendor M/s Sunen International.

11. With respect to the documents pertaining to M/s Sunen International, additionally this Court finds no mention of the said M/s Sunen International in the written statement. The averments which have been relied upon by the Petitioners to justify the said reference do not bear out the same.

12. This Court also finds merits in the submissions of the Respondents that the Petitioners herein had sufficient opportunities from 2019 to 2022 to collected and file additional documents on which reliance is now sought to be placed upon. The filing of this application at the time when the Court was concluding the hearing the application under Order 13A CPC evidences that the Petitioners herein were merely delaying the adjudication of the said application.

13. Further, the reliance placed on the said additional documents at this belated stage falsifies the declaration filed by the Petitioners in the statement of truth extracted above. In this commercial suit, the stage of filing the documents has passed; and the parties are not at liberty to file additional documents, at this stage on the pleas raised by the Petitioner in this application.

14. Accordingly, the present petition is dismissed. Pending application

stands disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

AUGUST 9, 2023/*rk/sk*

Click here to check corrigendum, if any