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

Date of decision: 04.09.2023

\+ CM(M) 1343/2023 & CM APPLs. 42866/2023, 42867/2023

M/S ROOTS COOLING SYSTEM PVT. LTD ..... Petitioner

Through: Mr. Rajesh Yadav, Senior Advocate with Mr. Vaibhav Sethi, Advocate.

versus

BIPIN KUMAR GUPTA ..... Respondent

Through: Mr. Vivek Gupta and Mr. Ankit Verma, Advocates.

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 42867/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1343/2023 & CM APPL. 42866/2023

1. This petition filed under Article 227 of the Constitution of India impugns the order dated14.08.2023 passed by the District Judge (Comm-03), South-East District, Saket Court ('Trial Court') in CS DJ No. 93/2021 whereby, the Trial Court allowed the application filed by the Respondent under Order 11 Rule 1, Code of Civil Procedure, 1908 ('CPC') read with Section 151 CPC seeking permission to file additional documents.

1.1. The Trial Court by the said order also dismissed the Petitioner's application under Order 13 Rule 3 read with Section 151 CPC to de-exhibit the documents tendered by PW-1 on 19.05.2023.

1.2. For the sake of convenience, the parties are being referred to as per their original status and rank before the Trial Court.

Brief facts:

2. The Petitioner herein is the defendant and the Respondent herein is the plaintiff in the suit. The suit was filed by the plaintiff initially under Order 37 of the CPC for recovery of Rs. 46,46,746 along with interest at 24% p.a.

2.1. Though the suit was instituted under Order 37 CPC; the ADJ, South-East District, Saket Courts ('predecessor court') *vide* order dated 17.02.2021 treated the suit as an ordinary civil suit and issued summons under Order 5 Rule 9 CPC. The suit was, therefore, treated as an ordinary civil suit.

2.2. The defendant entered appearance and filed its written statement belatedly which was taken on record by the Trial Court *vide* order dated 15.12.2021, subject to payment of costs of Rs. 2,000. The said costs were paid by the defendant belatedly on 27.04.2023.

2.3. In the meantime, the predecessor court *vide* order dated 07.10.2021 opined that the disputes arising between the parties is commercial in nature and accordingly, directed that the suit be transferred to the concerned commercial court i.e., Trial Court. Upon being transferred, the suit was registered as a commercial suit and has been tried accordingly by the concerned commercial court.

2.4. The plaintiff filed its replication on 11.04.2023 and along with the said replication filed additional documents, albeit without seeking leave of the Trial Court. Pertinently, at this stage, no objection was raised by the defendant regarding the additional documents filed by the plaintiff.

2.5. The issues were framed by the Trial Court vide order dated 11.04.2023 and the matter was placed before the Local Commissioner for recording of evidence.

2.6. On 19.05.2023, the plaintiff tendered its affidavit by way of evidence of its witness PW-1 and along with that the witness inter-alia tendered four (4) documents i.e., invoices as exhibited PW-1/9, 1/10/ 1/13 and 1/14. These invoices were filed with the replication. Pertinently, no objection was raised by the defendant at this stage as well when the documents were tendered and were duly exhibited.

2.7. The defendant at that stage on 19.05.2023 filed an application under Order 14 Rule 2 CPC seeking adjudication on the issue of territorial jurisdiction as a preliminary issue. The said application of the defendant was rejected by the Trial Court *vide* order dated 19.05.2023.

2.8. The defendant impugned the said order dated 19.05.2023 before this Court in CM(M) 1016/2023, which was dismissed *vide* order dated 04.07.2023.

2.9. In the aforesaid circumstances, on the next date i.e., 05.07.2023, the Petitioner herein filed an application under Order 13 Rule 3 CPC for the 'first' time raising an objection to the filing and exhibition of the invoices i.e., exhibit PW-1/9, 1/10, 1/13 and 1/14 on the ground that the said documents though filed with the replication were filed without seeking prior leave of the Trial Court.

2.10. In view of the aforesaid objection, the Respondent herein filed an application under Order 11 Rule 1 read with Section 151 CPC seeking permission of the Trial Court to take on record the additional documents, which already stood filed on record along with the replication dated

11.04.2023.

Submissions of the learned counsel for the parties:

3. The learned senior counsel for the Petitioner states that in view of the judgment of a Coordinate Bench of this Court in **Zee Entertainment Enterprises Private Ltd. v. Saregama India Ltd. 2019,** SCC OnLine Del 10215**,** and judgment of the Supreme Court in **Sudhir Kumar v. Vinay Kumar G.B.,** (2021) 13 SCC 71,the plaintiff ought to have filed these additional documents along with the plaint in terms of the mandate of Order 11 CPC as amended by the Commercial Courts Act, 2015 ('Act of 2015') considering that the suit is a commercial suit.

3.1. He states that the objection with respect to the non-filing of these invoices with the plaint was raised by the defendant in its written statement and since these documents were in the possession of the plaintiff prior to the filing of the suit; no reasonable ground has been made out by the plaintiff to file these additional documents at this belated stage and he states that therefore, these documents ought not to be allowed by the Trial Court to be taken on record. He states that the plaintiff has failed to show any reasonable cause for non-filing the said documents with the plaint.

4. In reply, the learned counsel for the Respondent states that since the suit was initially instituted as an ordinary civil suit, the provisions of order 11 Rule 1 CPC did not govern the initial filing. He states that the plaint was filed as an ordinary suit and therefore, the rigours of Order 11 CPC as amended by Act of 2015 was not followed. He, further, states that the suit has been filed for recovery of money on the basis of a running account maintained between the parties.

4.1. He states that along with the plaint the Petitioner had duly filed the ledger for the period 01.04.2016 to 31.03.2019 and the demand for the recovery of payment on account of invoice nos.074, 075, 102 and 106 ('invoices') which are the impugned invoices have been specifically disclosed in the said ledger.

4.2. He states that therefore, in view of the specific averments made in the plaint and on account of the ledger account annexed with the plaint, the defendant herein had due notice and knowledge of the impugned invoices which form the basis of the claim.

4.3. He states that in view of the peculiar circumstances where the suit was subsequently converted from ordinary to commercial suit on 07.10.2021, the order dated 11.04.2023 of the Trial Court permitting the said documents to be taken on record does not suffer from any error.

Findings:

5. In the opinion of this Court, in the facts of this case, the defendant herein has not left any stone unturned in delaying the proceedings.

6. The defendant initially delayed the filing of the written statement and the said delay was condoned by the Trial Court *vide* order dated 15.12.2021 and permitted the written statement to be taken on record subject to payment of costs. The said costs itself was belatedly paid on 27.04.2023.

7. Thereafter, the replication was filed by the plaintiff on 11.04.2023 along with these impugned invoices. However, at that stage, the defendant raised no objection for the said documents being taken on record.

8. Similarly, when these invoices were exhibited by the plaintiff's witness on 19.05.2023 once again no objection was taken to the said exhibition.

9. At that stage, initially, on 19.05.2023 during the recording of evidence, the Petitioner sought to stay the recording of evidence by seeking

adjudication from the Trial Court on the issue of territorial jurisdiction, which was framed as issue no.5. The said application of the Petitioner was dismissed by the Trial Court on 19.05.2023.

10. The Petitioner challenged the said order on 04.07.2023 before this Court. It was only after this Court on 04.07.2023 declined to interfere in the order passed by the Trial Court on 19.05.2023 that an application was filed before the Trial Court on 05.07.2023; for the first time objecting the exhibition of the documents/invoices.

11. The aforesaid facts evidence that between 11.04.2023 and 05.07.2023, the defendant did not raise any objection to the filing of the impugned invoices or their tendering in evidence. The objection to the filing has been raised belatedly.

12. The Trial Court admittedly has discretion to permit the plaintiff to place on record of additional documents along with the replication under Order 11 Rule 5 CPC. In the facts of this case, considering the fact that initially the suit was filed as an ordinary civil suit, the rigours of Order 11 as noted by this Court in **Zee Entertainment Enterprises Private Ltd.** (supra) and **Sudhir Kumar** (supra) cannot be applied to the plaintiff herein. Since the suit was initially filed as an ordinary suit, neither party complied with the provisions of Order 11 CPC or the other amended provisions of CPC as made applicable by Act of 2015 while filing the plaint or the written statement.

13. The Supreme Court recently in the judgment of **Raj Process Equipments and Systems Pvt. Ltd. vs. Honest Derivatives Pvt. Ltd 2022 SCC OnLine SC 1877**, held that when an ordinary suit instituted is transferred from the normal Civil Court, after summons were issued, to be

tried before a Commercial Court, the provisions of CPC governing the suit at the time of its initial institution would remain relevant for considering an application filed by the defendant seeking enlargement of time in filing the written statement. The relevant extract of the judgment reads as under:

> *"9. There is no dispute about the fact that at the time when the suit was filed and at the time when the order dated 03.07.2018 was passed, the court before which the suit was pending was a normal Civil Court. It was only after the order dated 03.07.2018 was passed directing the matter to proceed ex-parte that the matter got transferred to a Commercial Court.*
> *10. It is also an admitted fact that the period of 120 days as stipulated in the second proviso to sub-rule (1) of Rule 1 of Order V CPC and the proviso to Rule 1 of Order VIII expired on 18.06.2018.*
> *11. In other words, the time that was available, if a strict interpretation is given to the aforesaid provisions, was nothing because the time of 120 days had expired even when the matter was pending before the normal Civil Court.*
> *12. Reliance was placed by the High Court on the judgment of this Court in SCG Contracts India Private Limited v. K.S. Chamankar Infrastructure Limited (2019) 12 SCC 210, in support of the contention that the time-line prescribed under the second proviso to sub-rule (1) of Rule 1 of Order V CPC is mandatory and that the appellants have forfeited their right to file written statements.*
> *13. But we do not agree. The suit that became the subject matter of dispute in SCG Contracts India Private Limited, appears to have been filed before the Commercial Court and not before the normal Civil Court. Insofar as the normal Civil Courts are concerned, it is the proviso to Order VIII Rule 1 CPC which applies. In Salem Advocate Bar Association v. Union of India, (2005) 6 SCC 344, this Court held that the proviso to Rule 1 of Order VIII CPC is directory and not mandatory. An exception was carved out in SCG Contracts India Private Limited to this Rule, by this Court insofar as the commercial disputes are concerned by invoking the second proviso to sub-rule (1) of Rule 1 of Order V. Therefore, to apply the same principle to a matter where the suit was instituted before the normal Civil Court and transferred to a Commercial Court after the expiry of 120 days would be to give a complete twist to the interpretation given by the 3-member Bench in Salem Advocate Bar Association, to the proviso to Order VIII Rule 1 CPC.*
> *14. In fact the decision in SCG Contracts India Private Limited is by a 2-member Bench, which was dealing with the second proviso to sub-rule (1) of Rule 1 of Order V. Therefore, when the decision of the 3-member Bench in Salem Advocate Bar Association was cited before this Court in SCG Contracts India Private Limited, this Court held in paragraph 11 that the earlier law on Order VIII Rule 1 has now been set at naught.*

Therefore, what is to be applied to normal Civil Courts is Order VIII Rule 1 and the interpretation given to the same in Salem Advocate Bar Association.
15. In fact the suit on hand is a suit for damages for the alleged loss suffered by the respondent, on account of the supply of defective machinery. Hence, we cannot deprive the appellants of an opportunity to contest the claim on merits.
16. Therefore, the appeal is allowed, the impugned order passed by the High Court and the order of the Commercial Court are set aside. The applications filed by the appellants are allowed and the Commercial Court is directed to take on record the written statements filed by the appellants and proceed with the hearing of the suit on merits."

The ratio of the said judgment is relevant for considering that the plaintiff herein similarly while instituting the suit was seeking to comply with the provisions of Order VI and VII of CPC as it applies to the ordinary suit and was not mindful of the rigours of the Act of 2015 and the amended provisions of CPC. The plaintiff in the present case has pointed out that the invoices were duly reflected in the ledger filed along with the plaint and therefore, the defendant had due notice of the said invoices.

14. In these facts and circumstances, the order of the Trial Court exercising its discretion in allowing the application for placing on record the additional documents does not suffer from any material irregularity which would merit interference by this Court in its jurisdiction under Article 227 of the Constitution of India.

15. In this regard it would be instructive to refer to the judgement of a Coordinate Bench of this Court in ***Black Diamond Trackparts Pvt Ltd. & Ors. v. Black Diamond Motors*** 2022 SCC OnLine Del 545, which reads as under:

"*Before proceeding further, it may be noted that the power under Article 227 of the Constitution of India being one of judicial superintendence cannot be exercised to upset conclusions, howsoever erroneous they may be, unless there was something grossly wrong or unjust in the impugned* *order shocking the court's conscience or the conclusions were so perverse that it becomes absolutely necessary in the interest of justice for the court to interfere. The powers under Article 227 will be used sparingly. The Supreme Court has observed in* ***M/s India Pipe Fitting Co. Vs. Fakhruddin M.A. Baker And Anr*** *(1997) 4 SCC 587 and in* ***Mohd. Yunus Vs. Mohd. Mustaqim & Others*** *(1983) 4 SCC 566 that the supervisory jurisdiction conferred to the High Courts under Article 227 of the Constitution of India is limited to overseeing that an inferior court or tribunal functions within the limits of its authority and is not meant to correct an error, even if apparent on the face of the record. A mere wrong decision without anything more is not enough to attract this jurisdiction*."

(Emphasis Supplied)

16. Accordingly, this petition is without any merits. The same is dismissed subject to payment of costs by the Petitioner by Rs. 10,000 to the Respondent within a period of one (1) week. Pending application stands disposed of.

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 04, 2023/msh/asb

Click here to check corrigendum, if any