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

Date of decision: 13.09.2023

+ CM(M) 1480/2023 & CM APPL. 47112/2023

VANDANA KAPURIA

..... Petitioner

Through: Mr. Kapil Gupta, Advocate

versus

D.D. PRADHAN & COMPANY PVT. LTD

..... 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 (ORAL):

CM APPL. 47113/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1480/2023 & CM APPL. 47112/2023

1. This petition impugns the order dated 01.09.2023 passed by the District Judge, Commercial-03, South East District, Saket Courts, New Delhi in CS (Comm.) No. 306 of 2020 titled as **Vandana Kapuria v. D.D. Pradhan And Company Pvt. Ltd** ('Trial Court') whereby the Trial Court dismissed the application filed by the Petitioner herein under Order XVIII Rule 2 and 17 read with Section 151 of Civil Procedure Code, 1908 ('CPC') seeking permission to lead evidence in rebuttal by re-examining PW-1 to prove the e-mails, which were confronted to defendant witness DW-1 and to call upon the



financial records of the defendant from the Registrar of company as well as from the GST Department.

1.1. The Petitioner herein is the plaintiff and the Respondent is the defendant in the civil suit. The civil suit filed for recovery of Rs. 12,55,817/- against the Respondent and its directors.

1.2. In the facts of this case, the application under Order XVIII Rule 2 and 17 read with Section 151 of CPC was filed after the final arguments stood concluded and, on the date, when the matter was listed for final judgment before the Trial Court.

2. Learned counsel for the Petitioner states that the necessity for filing the said application arose in view of the cross-examination of DW-1, which was recorded on 31.03.2023 and 24.07.2023.

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

4. This Court has perused the impugned order of the Trial Court, which reads as under:-

“5. The issues in this case framed on 13.01.2023 and the onus is on the plaintiff to prove whether he is entitled for the recovery of sum of Rs. 12,55,817/- along with interest. The plaintiff tendered the affidavit of evidence of PW1 on 14.03.2023, thereafter, PW1 was cross examined and discharged on 21.03.2023 and matter was posted for 31.03.2023 for defence evidence. DW1 tendered his affidavit of evidence on 31.03.2023 and cross examined and discharged on 24.07.2023. Thereafter, the matter was posted for final arguments on 01.08.2023. The final arguments concluded on 05.08.2023 and matter was posted for judgment on 19.08.2023 but on 19.08.2023, ld. Counsel for plaintiff filed the present application. It is a settled law that U/o 18 Rule 3 CPC that the plaintiff would be entitled to rebuttal evidence only if the onus is on the defendant, however, the onus of recovery is on the plaintiff, therefore, plaintiff is not entitled for rebuttal evidence in terms of Order 18 Rule 3 CPC on the issue of which onus is on the plaintiff. Even otherwise, the matter has already been listed for judgment and this appears to be nothing but to delay the proceedings by filing up the lacunas. The present application has no merits, hence, dismissed and disposed off according.”



4.1. It is evident from the record of the Trial Court that the matter was posted for final arguments on 01.08.2023. The final arguments were concluded on 05.08.2023 and the matter was further posted for judgement on 19.08.2023. It was at that this stage that the Petitioner herein filed this application under Order XVIII Rule 2 and 17 of CPC for leading evidence and placing on record documentary evidence.

4.2. After passing of the impugned order, the matter was next listed before the Trial Court on 06.09.2023. Upon enquiry, learned counsel for the Petitioner states that at this stage (on 06.09.2023), the Petitioner herein filed a fresh application on 01.09.2023 before the Trial Court seeking striking off of the written statement of the defendant as it was not accompanied at the appropriate time with the affidavit of admission/denial of documents. He states that the matter is now listed before the Trial Court on 15.09.2023 for hearing the said application for striking off of the defence.

4.3. The aforementioned actions of the Petitioner give a distinct impression that the successive applications are being filed by the Petitioner i.e., the plaintiff before the Trial Court to obviate to passing of the final judgement and this is against the mandate of the Commercial Courts Act, 2015 ('Act of 2015'). This Court therefore, finds merit in the findings of the Trial Court that the plaintiff herself is trying to impede the final judgment.

5. This Court is of the opinion that the filing of the present petition under Article 227 of the Constitution of India appears to be misconceived at the stage when the matter, being a commercial suit, has been reserved for final judgement and is listed for final pronouncement.

5.1. At this stage, it would be relevant to refer to Section 8 of the Commercial Courts Act, which reads as under:-

“8. Bar against revision application or petition against an



interlocutory order. – Notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, and any such challenge, subject to the provisions of section 13, shall be raised only in an appeal against the decree of the Commercial Court.”

5.2. With respect to the legislative intent of the said provision in the Act of 2015, it would be instructive to refer to the judgement of a Division Bench of this Court in ***Black Diamond Trackparts Pvt Ltd. & Ors. v. Black Diamond Motors 2021 SCC OnLine Del 3946*** wherein it was observed that the scope of interference in the exercise of powers under Article 227 of the Constitution of India should be used very sparingly. The operative portion to this aspect reads as under:

“.....Thus, though we are of the view that gates of Article 227 ought not to be opened with respect to orders in commercial suits at the level of the District Judge against which a revision application under CPC was maintainable but which remedy has been taken away by the Commercial Courts Act, but abiding by the judgments aforesaid, hold that it cannot be said to be the law that jurisdiction under Article 227 is completely barred. However the said jurisdiction is to be exercised very sparingly and more sparingly with respect to orders in such suits which under the CPC were revisable and which remedy has been taken away by a subsequent legislation i.e. the Commercial Courts Act, and ensuring that such exercise of jurisdiction by the High Court does not negate the legislative intent and purpose behind the Commercial Courts Act and does not come in the way of expeditious disposal of commercial suits.”

(Emphasis Supplied)

A similar view has been reiterated by the Coordinate Bench of this Court in ***Ashok Kumar Puri & Anr. vs S. Suncon Realtors Pvt. Ltd. & Anr (2021) SCC Online Del 5220***

“9. The above observations of the Division Bench are fully applicable in the facts and circumstances of the present case. In the present case also, if it were not a commercial matter, the remedy of the petitioner against the impugned order would be to file a revision petition under Section 115 of the Code of Civil Procedure, 1908 (CPC). However, the said remedy has been barred under Section 8 of the Commercial Courts Act, 2015 in



respect of commercial matters. **Therefore, the scope of interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India is extremely narrow and limited only in respect of orders that are patently lacking inherent jurisdiction. This is not a case where the impugned order was passed by the Commercial Court without inherent jurisdiction.**

10. In the present case, the Commercial Court has exercised its jurisdiction and allowed the application for condonation of delay filed on behalf of the respondents. Even though there may be some merit in the contentions raised on behalf of the petitioners with regard to the non-est filing, that cannot be a ground for this Court to exercise jurisdiction under Article 227 of the Constitution of India and interfere with the decision of the Commercial Court. This would completely frustrate the objective behind the Commercial Courts Act, that commercial matters should be decided expeditiously and parties may not challenge interlocutory orders passed in the proceedings, except those which are specifically appealable.”

(Emphasis Supplied)

Recently again a Coordinate Bench of this Court in **Black Diamond Trackparts Pvt Ltd. & Ors. v. Black Diamond Motors 2022 SCC OnLine Del 545** highlighting peripheries of the jurisdiction vested under Article 227 of the Constitution of India held 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)



6. This petition therefore, deserves to be dismissed on this ground alone as the Petitioner has failed to point out any justification for invocation of the jurisdiction of this Court.

7. During the course of arguments, learned counsel for the Petitioner fairly admits that the e-mails, which the DW-1 was confronted with was not produced with the plaint and were only confronted during the course of his cross-examination on 24.07.2023. The filing of documents in a commercial suit is governed by the rigorous provisions of Order XI CPC as amended by the Act of 2015. The Petitioner cannot overcome the rigour of the said rules by filing an application at this belated stage under Order XVIII Rule 2 and 17 CPC. In this regard, the law is well settled in the judgment of the Supreme Court in *Sudhir Kumar @ S. Balyan v. Vinay Kumar G.B, 2021 SCC Online SC 734*, and judgment of this Court in *Bela Creation Pvt. Ltd. v. Anuj Textiles 2022:DHC:1772*

7.1. It has been held by Supreme Court in *Sudhir Kumar @ S. Balyan* (supra) 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. In the facts of this case, the Petitioner has also failed to point out reasonable cause for the non-disclosure of the emails, therefore, this Court is of the opinion that the discretion exercised by the Trial Court in not permitting to take any further evidence especially at the stage when the matter is fixed for final pronouncement of the judgment is correct in law and fact.

7.2. Similarly, under Order XI Rule 1 (6) CPC as amended by the Act of



2015, the plaintiff has sufficient opportunity to seek production of the documents which are in the custody of the defendant. In the facts of this case, the plaintiff at no stage prior sought the production of the GST returns or the financial records of the defendant. So also, the witnesses now proposed to be led by summoning the said record from the official departments was not enlisted by the Petitioner in its proposed list of witnesses. If this application of the Petitioner is allowed, it would undo the entire exercise undertaken by the Trial Court under Order XV A CPC.

7.3. The power of the Court under Order XVIII Rule 17 CPC cannot be invoked in a routine manner as sought to be proposed by the Petitioner especially when the matter stood reserved for final judgment (*re: Bagai Construction v. Gupta Building Material Store (2013) 14 SCC 1*).

7.4. In the opinion of this Court, the discretion exercised by the Trial Court in not permitting to take any further evidence when the matter is fixed for final pronouncement is well within the discretion of the said Court and this Court does not find any error of jurisdiction in the order passed by the Trial Court or other error warranting supervisory correction, in exercise of Article 227 jurisdiction of this Court.

8. Accordingly, the present petition is dismissed. Pending applications, if any, stands disposed of.

MANMEET PRITAM SINGH ARORA, J
SEPTEMBER 13, 2023/rhc/ms

[Click here to check corrigendum, if any](#)