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

Date of decision: 29.11.2023

+ CM(M) 1220/2022 & CM APPL. 48875/2022

AVINASH RASTOGI

..... Petitioner

Through: Ms. Ananya Bhattacharya, Advocate

versus

BHUPESH KHULLAR

..... Respondent

Through: Mr. Prasoon Kumar, Advocate
(Through VC)

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of Constitution of India impugns the order dated 06.10.2022 passed by the District Judge, (Commercial Court)-01, Central District, Tis Hazari Courts, Delhi ('Commercial Court') in CS (COMM) No. 2241/2019, titled as '**Avinash Rastogi v. Bhupesh Khullar**', whereby the Commercial Court partially disallowed the Petitioner's application filed under Order XI Rule 1(c)(ii) read with Order XI Rule 5 of Code of Civil Procedure, 1908 ('CPC'), for placing on record three (3) invoices bearing no K233108, K232028 and K232707 ('the said invoices').

1.1. The Petitioner is the plaintiff and the Respondent is the defendant.

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By: MAHIMA SHARMA
Signing Date: 07.12.2023
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CM(M) 1220/2022

Page 1 of 6



The suit has been filed by the plaintiff for recovery of an amount of Rs. 66,49,425 plus interest.

1.2. The parties are hereinafter referred to as per their original rank and status in the Trial Court.

1.3. The plaintiff is the sole proprietor of a proprietorship concern in the name and style of M/s Proxima Medicare and is the distributor and dealer of Renal Dialysis machines and consumables. The cause of action pleaded in the plaint is that the defendant failed to make payment for the Haemodialysis Machines and the consumables, sold to him as per specifications provided.

1.4. The defendant has denied purchasing the said machines from the plaintiff; and has therefore, disputed the claim raised in the suit.

2. Learned counsel for the plaintiff states that the Trial Court in the impugned order after recording a favourable finding that the said invoices are relevant, has however, denied permission solely on account of the 'stage of the proceedings'.

2.1. She states that the recording of evidence has not commenced in the suit. She states that the defendant's application for placing on record additional documents has been allowed by the same impugned order. She states admission/denial of the said documents filed by the defendant has to be carried out; and therefore, the matter is at the stage of filing affidavit of admission/denial of documents.

2.2. She states that along with the plaint, the plaintiff relied on the invoices issued to the defendant for sale of the machines in support of the claim of recovery, which are further corroborated by the challans issued by the defendant while returning the said machines.



2.3. She states it is on account of the false defence raised by the defendant in his written statement denying the sale of machines, that the plaintiff herein is compelled to place on record the three (3) invoices. She states the said invoices had been issued by the manufacturer of machines. She states the said machines purchased from the manufacturer have been sold and delivered by the plaintiff to the defendant.

2.4. She states that the said invoices issued by the manufacturer corroborate the plaintiff's invoices and the defendant's challans.

3. In reply, learned counsel for the defendant states that he denies the averments of the plaintiff as regards the cause of action pleaded in the plaint.

3.1. He states that the plaintiff is not entitled to place on record the said invoices on account of the advanced stage of the trial proceedings. He states that though the issues were framed in the suit on 04.08.2020, the recording of evidence is yet to be commenced.

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

5. At the outset, it needs to be recorded that the defendant disputes the stand of the plaintiff as regards the sale of machines to the defendant.

6. The plaintiff in its written submissions has placed on record a table duly enlisting (i) the details of the machine number; (ii) the plaintiff's invoice by which the said machine was sold to the defendant; and (iii) the defendant's challan by which the said machine was returned to the plaintiff.

It is the stand of the plaintiff that the machine, which forms the subject matter of the plaintiff's invoice and the defendant's challan were purchased from the manufacturer. And, the said three (3) invoices substantiate the plaintiff's invoices, which already form part of the Trial



Court record.

The table provided by the plaintiff in the written submissions reads as under:-

Machine No.	Invoice vide which the Plaintiff purchased the machines from M/s BAXTER (Documents not allowed by the Ld. District Judge)	Invoice vide which Plaintiff sold those machines to defendant (Already on record, the documents were place along with the plaint)
70359-05	Dated:28.04.2011 @ pg 304 • Returned vide Challan No. 192 @ pg 308	Dated:03.05.2021 @ pg 107
70567-02	Dated: 27.06.2011 @ pg 302	Dated: 29.06.2011 @ pg 108
70568-04	Dated:28.07.2011 @ pg 306 • Returned vide Challan No. 190 @ pg 310	Dated: 01.08.2011 @ pg 109
70567-01	Dated: 27.06.2011 @ pg 301	Dated: 29.06.2011 @ pg 108
70417-05	Dated:28.04.2011 @ pg 305 • Returned vide Challan No. 192 @ pg 308	Dated 7.05.2011 @ pg 107
70418-01	Dated:28.04.2011 @ pg 305 • Returned vide Challan No. 192 @ pg 308	Dated 7.05.2011 @ pg 107

7. From a perusal of the aforesaid table, it is evident that the plaintiff is seeking to place on record the said invoices to substantiate the claim, which has already been set up in the plaint by relying upon the invoices enlisted in column No. 3 of the aforesaid table.

8. The Trial Court as well in its impugned order has returned a finding that these three (3) invoices issued by the manufacturers, are relevant to the controversy. The operative portion of the impugned order reads as under: -

“16. As far as the documents which plaintiff has sought to file by way of additional affidavit dt.03.03.2022 i.e. invoices no. K2331 08, K2 32028



*and K232707 which he later on included in application dt. 07.05.2021 is concerned the plaintiff has sought to file the invoices by which the plaintiff has purchased the dialysis machine from Baxter India Pvt. Ltd and sold to defendant which later on returned by defendant to plaintiff. **Hence, in my view both these documents are also relevant, documents are necessary for decision of the case.** undoubtedly these documents were not filed by the plaintiff with the main application and sought to file the same through by way of additional affidavit. There is no provision under the C.P.C. or the Commercial Courts Act that with the additional affidavit filed in respect of application under Order 7 Rule 14 CPC or under Order 11 Rule 1 (C) CPC, the documents can be filed which are not mentioned in the main application. The plaintiff has not mentioned that these documents were not in power and possession of plaintiff at the time of filing of suit. Moreover these documents has been sought to be filed after filing of the reply to the application by defendant and even rejoinder filed by the plaintiff to the said application. Therefore, despite the fact that these documents might be relevant cannot be taken on record being filed after long gap of even filing of written statement hence, these documents sought to be filed through additional affidavit and later on through application u/s XI is hereby declined.”*

(Emphasis Supplied)

9. The plaintiff has explained that the necessity of the filing of the said invoices arose in view of the defence raised in the written statement. Plaintiff has stated that it was not contemplated that defendant would deny the sale in the written statement. This Court is satisfied with the explanation of the plaintiff for non-filing of these documents alongwith the plaint and is further satisfied that these documents do not change the cause of action pleaded in the suit.

10. This Court is therefore of the opinion that since in the facts of this case, the said invoices sought to be placed on record are in furtherance of the case already set up in the plaint, the said documents deserved to be allowed and to be taken on record. The defendant will have an opportunity to file an affidavit of admission/denial of documents and also cross-examine the plaintiff on the said documents in the trial.



11. It is also a matter of record that by the impugned order, the Trial Court has permitted the defendant as well, to place on record additional documents, therefore, the proceedings are still at the stage of completion of affidavit of admission/denial.

12. Accordingly, subject to payment of further costs of Rs. 15,000/- by the plaintiff to the defendant on or before the next date of hearing before the Trial Court, the said documents be allowed to be placed on record. However, the costs of Rs. 15,000/- imposed by this Court in addition to the cost, which have already been imposed by the Trial Court vide impugned order dated 06.10.2022.

13. With the aforesaid directions, the petition stands allowed.

14. The parties are directed to appear before the Trial Court on 13.12.2023 i.e., the date already fixed before the said Court.

MANMEET PRITAM SINGH ARORA, J
NOVEMBER 29, 2023/rhc/aa
Click here to check corrigendum, if any