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

Date of decision: 20.12.2023

+ CM(M) 1823/2023 & CM APPL. 57682/2023
 BUCKBOX TECHNOLOGIES PVT LTD Petitioner
 Through: Mr. Gautam Narayan and Mr. Mrinal
 Kumar Sharma, Advocates
 versus

SUMAN JAIN Respondent
 Through: Mr. Sumit Jain, SPA Holder of
 Respondent, in person

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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 27.10.2023 passed by the District Judge, Commercial Court-03, Shahdara District, Karkardooma Courts, Delhi ('Commercial Court') in CS (COMM) No. 485/2021, titled as '**Suman Jain v. Buckbox Technologies Pvt. Ltd.**' whereby the Commercial Court has dismissed the Petitioner's application seeking de-exhibition of documents, with costs of Rs. 3,500/- payable to the Respondent.

1.1. The Petitioner is the defendant and the Respondent is the plaintiff. The suit has been filed seeking recovery of Rs. 23,08,927/- (i.e., principal of Rs. 20,52,380/- + interest of Rs. 2,56,547/-) along with pendente lite and future interest.



2. Mr. Sumit Jain has entered appearance on behalf of the Respondent. He states that he has been duly authorised by Power of Attorney dated 21.09.2023 to represent the Respondent.

3. Learned counsel for the Petitioner has relied upon the submissions recorded in the previous order dated 07.11.2023. He states that the documents in questions were disallowed by the Commercial Court vide order dated 25.03.2023 and therefore, the Respondent illegally sought to exhibit the disallowed documents at the stage of tendering before the Local Commissioner.

3.1. He states that after this Court's order dated 07.11.2023, in the interregnum, the recording of evidence on behalf of the defendant stands concluded and the matter is now listed before the Trial Court on 02.01.2024 at the stage of the final arguments.

3.2. In addition, he states that he would like to draw this Court's attention to the proceedings recorded by the Local Commissioner on 07.10.2023 at paragraph 15 while marking exhibit PW-1/15 Colly, which reads as under:

"15. Copy of transcription conversation made through mobile phone and whatsapp [sic] messages between the plaintiff and the defendant is stored in pen drive along with certificate under section 65B Indian Evidence Act is Exhibited as PW1/15. (COLLY) running from 4 to 11. (objected by the counsel for the defendant to be decided by Honble Court.- This document was earlier sought to be bring [sic] on record by the plaintiff by way of separate application filed before this Honble court. However vide order dated 25.03.2023 this Honble court has specifically denied to accept this document on record. Now by rerouting the procedure the same document which was earlier denied cannot be placed on record. Answer by the AR of the plaintiff; the judge has given an opportunity to place on record the transcript evidence at the time of producing the evidence."

(Emphasis Supplied)

3.3. He states that Mr. Sumit Jain, the authorised representative ('AR') of



the plaintiff made an incorrect statement before the local Commissioner that the Trial Court had granted permission for tendering this electronic evidence and transcripts at the time of leading evidence.

3.4. He states that therefore, the prayer of the Petitioner herein for de-exhibiting the PW-1/15 be accepted and the impugned order dated 27.10.2023 be set aside.

4. The Respondent's AR, Mr. Sumit Jain, fairly admits that there is no order of the Trial Court permitting the plaintiff to submit the audio recording and transcript at the stage of evidence. He states that he made this statement before the Local Commissioner on the basis of the oral discussions at the hearing held before the Commercial Court on 25.03.2023.

4.1. He further states that since he has stepped into the witness box as the AR of the plaintiff, the direction, if any contained in order dated 25.03.2023 is binding on the plaintiff and not on the witness.

5. This Court has considered the submissions of the Petitioner and the AR of the Respondent.

6. This Court is unable to accept the submissions of the Respondent. The AR admits that since the Respondent is his mother and is a senior citizen, the entire proceeding has been prosecuted and conducted by him. He admits that he has been duly representing his mother, at each stage of the proceeding and has participated with the advocate in the drafting of the pleadings and filing of the documents.

7. The proceedings in the commercial suit with respect to disclosure and filing of documents is governed by Order XI of Code of Civil Procedure, 1908 ('CPC') as amended by Commercial Courts Act, 2015. The plaintiff in a commercial suit is obliged to disclose all documents in its power and



possession. In this case, the AR of the plaintiff has prosecuted the suit on her behalf. It is the stand of the AR of Respondent that the audio recording was within his/her possession at the time of drafting and filing of the plaint. Therefore, non-filing of the said audio recording was a conscious election of the plaintiff as well as her AR in the peculiar facts of this case. Therefore, the AR who stepped into the witness box as a witness cannot deny the binding nature of the provisions of Order XI CPC as is sought to be contended.

8. In the facts of this case, the plaintiff through her AR sought to bring the said audio recording on record by filing an application under Order XI Rule 1 CPC, however, the Commercial Court after considering the facts and the applicable law, by its order dated 25.03.2023 categorically dismissed the said application and denied permission to place the audio recording and transcript on record. The order dated 25.03.2023 though interlocutory in nature has attained finality in the suit proceedings. The Respondent (i.e., plaintiff) cannot overreach the said order by seeking to tender the disallowed document at the stage of recording of evidence before the Local Commissioner.

9. This Court is unable to accept that the directions in Commercial Court's order dated 02.09.2023 grant any liberty to the Respondent to introduce the disallowed documents at the stage of evidence. The said order of 02.09.2023 was procedural in nature and set out the rules for recording of the evidence and in no manner supersedes the Court's earlier order dated 25.03.2023.

10. Accordingly, keeping in view the Commercial Court's previous order dated 25.03.2023, the tendering of the document given mark 'Exhibit PW-



1/15' is impermissible and therefore, the impugned order dated 27.10.2023 is hereby set aside and it is directed that the said document be de-exhibited and taken off from the record.

11. The With the aforesaid directions, the present petition stands disposed of. Pending application stands disposed of.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 20, 2023/msh/aa

Click here to check corrigendum, if any