

13.08.2024
(D/L-21)
Ct.-19
(Susanta)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

C.O. 2850 of 2024

BTL EPC Limited
-Vs-
Phoenix Conveyer Belt India Private Limited

Mr. Sukwrit Mukherjee,
Mr. Subhankar Chakraborty,
Mr. Saptarshi Bhattacharjee,
Ms. Sayani Gupta ,

... For the Petitioner.

The defendant in a money suit is the petitioner of the instant application under Article 227 of the Constitution of India which is directed against order dated May 13, 2024 and October 05, 2023 passed by the learned Judge, Commercial Court at Alipore, District: 24 Parganas (South) in the said suit being the *Money Suit (Com) No. 69 of 2022 (old Money Suit 33 of 2022)*.

The learned Trial by the order impugned dated October 05, 2023 has granted leave to the plaintiff, the opposite party herein to rely on the additional documents which were not filed along with the plaint, and by the order impugned dated May 13, 2024 has dismissed an application filed by the petitioner for recalling of the said order dated October 05, 2023.

The defendant is objecting to the grant of such leave as it offends not only the provision of Order XI Rule 1(1) of the Code of Civil Procedure in its application to any suit in respect of a commercial dispute, but also Rule 1(4) thereof.

The plaintiff sought such leave on the ground that the learned filing advocate of the plaintiff was not conversant with the filing of commercial suits, as such, did not file the documents in the possession, control and custody relating to the suit along with the plaint.

The learned Trial Judge in exercise of his discretion has granted leave to the plaintiff to rely on the documents which could not be filed along with the plaint on the ground that for the ignorance of the advocate, the party should not suffer.

This Court is not inclined to interfere with the exercise of such discretion, particularly when such exercise does not appear to be arbitrary.

The orders impugned therefore do not call for any interference.

C.O 2850 of 2024 is thus dismissed without any order as to costs.

It is however made clear that the petitioner is at liberty to deal with the additional documents permitted to be relied on by the plaintiff.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)