

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1119 OF 2024

Ramesh Keshav Kadam

.. Petitioner

Versus

Star Wordwide Movers Pvt Ltd

.. Respondent

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- Ms. Pranjali Bhandari for Petitioner
 - Mr. Dattatray Adarkar for Respondent
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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 19, 2024

P. C.:

1. Heard Ms. Bhandari, learned Advocate for Petitioner and Mr. Adarkar, learned Advocate for Respondent.

2. Grievance is made before the Court that pursuant to conversion of the original Suit as Commercial Suit, Plaintiff (Petitioner herein) decided to refer to and rely upon certain documents which were submitted along with compilation of documents at Sr. Nos. 11, 13, 15 and 16 which have been rejected by the learned Trial Court. The order of the Trial Court is dated 13.04.2023. Rejection is based on two grounds i.e. Plaintiff having not averred anything about these documents and he having not disclosed them in the list filed along with the Suit plaint.

3. Ms. Bhandari would submit that in so far as document at Sr. No. 11 of the compilation of documents is concerned, it is a statement of

accounts of the outstanding bills for the period August 2010 to March 2011 dated 26.11.2011. In support of exhibiting the said document, she has drawn my attention to the Suit plaint and has persuaded me to peruse the averments in paragraph No. 6 onwards. She would submit that the time frame which has been specifically stated in the Suit plaint in paragraph Nos. 6 to 8 clearly covers the period during which this statement of accounts of the outstanding bills for the relevant period i.e. August 2010 to March 2011 is sought to be relied upon as the cause of action stated in the Suit plaint. In so far as this document is concerned, *prima facie*, I find that since the Suit is filed for recovery of amounts based on ledger statements maintained by the parties, such ledger statements of the parties produced along with Section 65B Certificate under the Indian Evidence Act will have to be admitted as exhibit if placed on record. Period during which the statement of account as against Sr. No. 11 is concerned is for the period August 2010 to March 2011 which is adequately covered in the averments made in the Suit plaint as noted above. Hence, it cannot be necessarily be inferred that there is no specific mention of the statement of accounts for the said period. In that view of the matter, the document at Sr. No. 11 subject to Plaintiff filing 65B certificate along with is required to be exhibited as evidence.

4. In so far as the remaining five documents are concerned i.e. documents at Sr. Nos. 13, 15 and 16, it is seen that these are five trail e-mails exchanged between the parties. Rather these are e-mails which are addressed by the Plaintiff to the Defendant. To mark these e-mails as exhibits, Ms. Bhandari has persuaded me to peruse the e-mails contained in a compilation. Compilation of said e-mails is handed over to this Court which are taken on record. Copy of the same is given to Mr. Adarkar. *Prima facie* in so far as the issue of exhibiting the e-mails is concerned, reading of the Suit plaint clearly enumerates the e-mails which have been specifically referred to and relied upon by the Plaintiff in support of Plaintiff's case. Plaintiff's submission is that these five e-mails are trail e-mails. If that is the case, Plaintiff will have to show whether these very trail e-mails emanate from the e-mails which have been exhibited by the Trial Court or in respect thereof. If the Plaintiff is able to make out any case, this Court shall consider the Plaintiff's case, otherwise appropriate order shall be passed after hearing the parties.

5. Mr. Adarkar seeks to file affidavit in reply which shall be filed within a period of one week from today.

6. Stand over to **27th August, 2024 at 2:30 p.m.**