



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 14631 OF 2024

Virtual Veda Pvt. Ltd.

A company incorporated under the provisions
Indian Companies Act, 1956
Having its office at G-501,
Lotus Corporate Park
Off Western Highway, Jogeshwari East,
Landmark Jai Coach Mumbai 400 063.

Represented by its Director

- a. Raju Mathurdas Paleja
- b. Vishal Ranjamn
- c. Pawar Satya Prakash Tiwari

...Petitioner

Vs.

Solutionsline Softtech Pvt. Ltd.

A company incorporated
under the Companies Act 1956,
having its registered under the Companies
Act, 1956, having its registered address at
Plot No. 97, Lane 5, Prathamesh Park
Baner, Pune – 411 045.

Represented by its authorised Signatory

Shri Vivek Haridev Bhargava
Age 59 years, Occupation : Business
R/at : Mahek Veerbhadra Nagar, Baner
Pune – 411 045.

...Respondent

Mr. Shailendra S. Kanetkar a/w Mr. Yash Deal	Advocate for the Petitioner
Mr. S. C. Wakankar	Advocate for the Respondent

CORAM : S. M. MODAK, J.

DATE : 19th NOVEMBER 2024

ORAL JUDGMENT :-

1. Heard learned Advocate Shri Kanetkar for the Petitioner-Defendant and learned Advocate Shri Wakankar for the Respondent-Plaintiff.

2. Even though writ petition is one, there is a challenge to three orders passed by the trial court in Special Summary Suit No. 253 of 2018. The details of those orders are as follows:-

(i) The order dated 12th September 2024 passed below Exh. 40 moved by the Defendant thereby refusing to **frame of certain additional issues**, on page 103 (the application is on page no. 48).

(ii) The order dated 20th September 2024 passed by the trial court thereby **allowing the Plaintiff to file documents** at Sr. Nos. 1 to 182 and marked them as Exhibit numbers, page number 110 (this order is passed on an application moved by the plaintiff dated 5th September 2024), on page number

106.

- (iii) The order dated 30th September 2024 on page number 119 **rejecting the prayer of the defendant, for discarding the additional evidence** (application is on page no. 113).

3. So the issues involved in this petition are :--

- (a) Whether it can be said that the plaintiff while additional affidavit of evidence has exceeded the liberty granted by this Court in disposed of writ petition?
- (b) Whether the plaintiff was justified in filing documents which were not filed earlier and which were not specifically referred earlier ?
- (c) Whether framing of additional issues is justified ?

4. The summary suit is for recovery of an amount of Rs. 87,93,200/-. Some of the relevant averments in the plaint are as follows:-

- (a) The Plaintiff case is “*they are doing the business of the software development and on the instructions of the Defendant, they have developed the software in Defendant’s Company as well as for the Clients as instructed by Defendant’s Company*”. Though

the plaintiff has executed the work, they were not paid the amount.

- (b) The duration for the suit claim is from 27th September 2014 upto 6th April 2017, whereas the e-mails referred in para no. 10 pertains to period from 27th May 2015 to 2nd November 2016.
- (c) The Plaintiff has explained the correspondence exchanged in between the Parties by way of five annexures. Annexure Nos. “A” to “E” which is part of the plaint itself.

Grant of leave

5. After appearance of the Defendant, they applied for leave to file written statement. It was allowed on a condition to deposit Rs. 20 lakhs. The amount is reduced by this Court to Rs. 15 lakhs. The first affidavit of examination-in-chief was filed by the Plaintiff prior to grant of leave to defend on 12.04.2024. After filing of the Written statement, trial court has framed four issues on 30th July 2024, on page no. 47.

Averments in Written Statement

6. Defendant has denied some of the averments in the plaint. In para no. 13 of the Written statement, Defendant has admitted about

the business transaction with the Plaintiff. However, according to the plaintiff, the defendant has pleaded about some mutual agreement between them. Wherein it was decided that the Defendant will not pay for certain projects and if the Defendant manages to convert the client, then only Defendant has agreed to pay for those projects.

Additional evidence

7. Considering the stand taken in the written statement, it has prompted the Plaintiff to file additional affidavit. The trial court refused the permission. This Court has granted liberty on 12th September 2024 in an order passed in Writ Petition (ST) No. 26270 of 2024, page No. 38. Afterwards, Plaintiff has done two acts before the trial court. They are as follows :-

- (i) **The filing of the additional affidavit** containing certain averments. They are beyond the scope of liberty granted by this Court. This is the grievance raised by Defendant. The affidavit is on page number 41.
- (ii) To support the averments in the additional affidavit, the Plaintiff has sought permission **to produce the documents** by way of an application dated 5th September 2024, on page number 106.

Orders passed by trial Court

8. As said above, the trial court **has rejected** the request of Defendant for discarding this additional affidavit and objection to production of the documents. Whereas the Defendant requested the trial court to frame additional issues on the basis of their averment in the written statement, **it is also rejected.**

Prayer for striking and objection to production of documents.

9. The grievance for discarding affidavit and objection to production of the documents are connected to each other. Hence, I am deciding those objections together. According to learned advocate Mr. Kanetkar, contents upto para no. 11 of the said affidavit deals with the denial by the Plaintiff about averments in the written statement. However, he is having strong objection to the averments **in para nos. 12 to 15** and according to him, it is beyond the scope of the liberty granted by this Court.

10. Whereas, according to learned Advocate Mr. Wakankar, these paragraphs were pleaded in order to rebut the averments in the written statement. In a pre-suit correspondence, the Defendant has never taken a stand which is taken in certain paragraphs of the plaint and which is

dealt with in para nos. 14 and 15 of the additional affidavit and according to him, his client is justified in averring those paragraphs.

11. Learned Advocate Mr. Kanetkar has invited my attention to an application on page no. 106 about production of the documents. **He made the following submissions:-**

- (i) There is no reason quoted in the application for production of the documents.
- (ii) These documents were not referred in the plaint and also not produced along with plaint and prior to settlement of the issues.
- (iii) His grievance is Defendant never got an opportunity to deal with them by way of written statement.
- (iv) He relied upon the observations in case of Haldiram (India) Pvt. Ltd. and Ors. Vs. Haldiram Bhujawala and Anr.¹ about interpretation of provision of Order VII Rule 14 of the Civil Procedure Code. The explanation given for belated production was inadvertence and oversight. It was not accepted.

¹ (2009) 109 DRJ 639

(v) According to him as contemplated under the provisions of Order VII Rule 14(3) leave can be granted only when exceptional case is made out and the power has to be used sparingly. (para nos. 21 and 22 of the judgment). “According to Mr. Kanetkar *explanation given during oral arguments by learned Advocate Mr. Wakankar is not pleaded in the application for production of the documents*”

(vi) He submitted the trial court has not given any finding about applicability of the provision of the Order VII Rule 14 and Order XIII Rule 1 of the Civil Procedure Code in the order dated 20/9/2024. Even though the trial court has not referred about the explanation offered by learned Advocate Mr. Wakankar about late production of the documents.

(vii) About duration of these documents, learned Advocate Mr. Kanetkar referred to two durations. They are :-

- (a) The duration about e-mails referred in para no. 10 of the plaint is from 27th May 2015 to 2nd November 2016.
- (b) Whereas according to him, the documents sought to be

produced now pertains to period earlier to 27th May 2015.

12. Learned Advocate **Mr. Wakankar** supported the order by making following submissions:-

a) He relied upon the provisions of Order VII Rule 14 (3) of the Civil Procedure Code. He placed reliance on following two judgments:-

(i) *Vitorino Rodrigues, Major and Others Vs. Nirmalabai Shivajirao Dessai and Others*² Documents not filed earlier can be subsequently produced. However, learned Advocate Mr. Kanetkar has invited my attention to para no. 15. Court has reiterated the power under Order VII Rule 14 (3) but it has to be exercised in rare cases.

(ii) *Levaku Pedda Reddamma and Ors. Vs. Gottumukkala Venkata Subbamma and Anr.*³

Wherein, it is observed that Rules of procedure are hand-maid of Justice and if there is a delay in producing documents, it can be allowed subject to cost. (para no. 6)

b) These documents were filed to prove the averments in para nos.

2 (2010) 6 AIIMR 208

3 (2022) 2 ApextCJ(SC) 339

14 and 15 of the additional affidavit.

- c) The duration of the new documents falls within the duration for which plaintiff carried out the work of design and development that is from 27th September 2014 to 6th April 2017, as pleaded in para no. 4 of the plaint.

Consideration

13. It is true Rule 14 of Order VII lays down the procedure for filing of the documents relied upon in the plaint by the Plaintiff. The procedure is as follows:-

- (i) The documents relied upon by the Plaintiff has to be produced along with plaint along with list.
- (ii) If the Plaintiff is not possessing that document, he has to state who is possessor of those documents.
- (iii) If subsequently, plaintiff wants to rely upon the document (which is not produced or not explained), **he can produce it but it can be done only with leave of the Court.**

Documents averred in the plaint

14. Admittedly, documents sought to be produced were not produced alongwith plaint. In the plaint, what the Plaintiff has averred

about the document is as follows:-

- (i) 'Annexure- A' contains the documents:- the correspondences exchanged in between the Parties during course of the transaction.
- (ii) 'Annexure – B' is document which shows the payment made by the Defendant.
- (iii) 'Annexure- C' give details in order to support the claim for Rs. 67,64,000/-.
- (iv) 'Annexure - D' consists of the reminders sent by the Plaintiff to the Defendant.
- (v) 'Annexure - E' are the emails wherein the Defendant admitted the liability and promised to pay in near future, as pleaded by the Plaintiff.

15. From the above, one can say that the Plaintiff has pleaded about exchange of the correspondence by e-mails and by sending invoices. Plaintiff never pleads that these new documents are part of these five annexures. The observation of this Court in an order dated 12th September 2024 in disposed of writ petition on page no. 38 are as follows:-

“If Plaintiff is denied the right to file the additional affidavit in lieu of examination-in-chief, the assertions of Plaintiff which are denied by Defendant in its written statement will not be proved by the Plaintiff and that would be severally detrimental and prejudicial to the Plaintiff’s substantive right to maintain the suit proceedings itself.”

16. Now the issue is when this Court has permitted the Plaintiff to file an additional affidavit, particularly for dealing with denials in the Written statement, **what can be the contents of the additional affidavit?** As said above in para nos. 3 to 11 in additional affidavit, the plaintiff has dealt with certain averments in the written statement. This written statement was filed subsequently whereas first affidavit of evidence was filed earlier.

17. Learned Advocate Shri Kanetkar has quoted before me the practice prevailing prior to the procedure of filing of affidavit of examination-in-chief. According to him first chief and cross is recorded and the scope of the re-examination is only limited for clarifying ambiguity appearing in cross-examination.

18. He relied upon the observation in case of **Mr. Jitendra Singh**

Rajendra Singh Kushwah and Ors. Vs. Suresh Rajendra Singh

Kushwah and more specifically para no. 12. This Court has reiterated the scope of affidavit of examination-in-chief that has to be restricted the issues involved in the suit. If the affidavit deals with the facts which are beyond issues involved, those paragraphs needs to be discarded. This Court has taken recourse to the provisions of the Section 151 of the Civil Procedure Code.

19. According to learned Advocate Mr. Wakankar, the provisions of the Order VI Rule 16 of the Civil Procedure Code are applicable to pleading and not to evidence. In the Order dated 30.09.2024, page no. 120, the learned Judge has referred about the judgment as quoted before me by learned Advocate Shri Kanetkar. In para no. 5 learned Judge has rejected the prayer for discarding. It is true that learned Judge has not given any reasons in rejecting the prayer in discarding, but when all the facts are narrated above, this Court has certainly deal with them and when this Court has granted liberty to the Plaintiff to file additional affidavit, the Plaintiff is certainly expected to state what is their stand about the defence taken in the Written statement. **If the Defendant has put up a case in written statement (which was filed after**

filing of first evidence affidavit), the Plaintiff is bound to state what is their version. In this case first affidavit was filed prior to the filing of the Written statement. The Plaintiff's witness is not cross-examined. **So if there is plea taken in the Written statement, this Court feels that the Plaintiff is justified in explaining their stand about defence taken in the Written statement.**

20. I do not think that the Plaintiff has exceeded the liberty granted by this Court in the averring those facts in the additional affidavit. Even though these reasons are not there, the conclusion drawn by the trial Court of refusing to discard additional evidence cannot be faulted. **So I am rejecting those contentions taken in respect of the discarding additional affidavit.**

21. When question comes about producing additional documents, it is true that such leave cannot be granted by the Court in a light manner. There are no reasons quoted while producing additional documents in the application page no. 106.

22. According to learned Advocate Mr. Wakankar, the situation has changed due to amendment in the provisions of the Order VII Rule 14 of the Civil Procedure Code. The law which stands prior to the

amendment Rule 3 is reproduced below :-

“Whether document in possession is not filed with the plaint under this rule, it shall not be allowed to receive any evidence on behalf of the plaintiff at the hearing of the suit.”

As per 2002 amendment, the bar was lifted and production can be allowed, only when leave is granted.

23. Now it needs to be seen whether exceptional case is made out for production of the documents. The explanation offered by learned Advocate Mr. Wakankar is not pleaded in the application, **but when the averment in para nos. 14 and 15 of the additional affidavit are perused, I find some exceptions offered for new production.** This is not part of the reasoning of the trial Court.

24. There are two aspects:-

- (i) Whether it is sufficient ground for production and
- (ii) Whether the avernments in para nos. 6 and 7 of the additional evidence affidavit (thereby dealing with averments in para no. 14 and 15 of written statement) can be said to be sufficient considering the voluminous documents 182 which were filed before the trial Court.

25. Learned Advocate Shri Kanetkar has produced set of those documents. It consists of certificate issued under Section 65(B) of the Indian Evidence Act, list of those 183 documents and copies of those documents. Those 183 documents consists of exchange of emails in between the Plaintiff and Defendant. Whereas there are seven invoices at Sr. No. 183.

26. According to learned Advocate Mr. Kanetkar if the amount mentioned in these invoices is considered, the suit claim will exceed the amount of Rs. 67,64,000/-(principal claim without interest).

Whereas according to learned Advocate Mr. Wakankar the amount averred as per those invoices is part of the original claim. About emails learned Advocate Mr. Kanetkar submitted that they are not received by his client.

27. I am satisfied that the case is made out for production of those documents. I think the trial Court has not dealt with issue properly.

28. The trial Court allowed production without considering the objections which are raised now. Trial court was justified in allowing the production but it cannot be by blanket order. The plaintiff ought to explained their nature and other details. I think it is lacking. This

Court feels Plaintiff need to clarify and satisfy the trial court about the relevancy of those documents *vis a vis* the suit claim and how amount covered therein is part of the original claim or this is part of the claim after deducting payment made by the defendant. Unless and until Plaintiff will clarify this, their production cannot be allowed. So part of the order needs to be modified.

Recasting of issues

29. The issues framed by the trial Court are on page no. 47. They are as follows:-

1.	Whether plaintiff proves that as per the instructions of the defendant he has carried out the work of design and development of customized workflow software, router custom development and gadgets design for the period from 27/9/2014 to 06/04/2017?
2.	Whether plaintiff proves that the amount of Rs. 67,64,000/- is still due and payable by the defendant to the plaintiff?
3.	Whether plaintiff is entitled for 15% interest as prayed for?
4.	Whether plaintiff is entitled for to recover Rs. 87,93,200/- from the defendant?
5.	What order and decree?

30. Whereas in the application, Defendant has suggested the following issues:-

(A) Whether provisions of order 37 of code of civil procedure are

applicable to the present suit. Considering the defendant claim that there is no clear admission of liability or a written contract supporting plaintiff claim?

(B) Whether plaintiff has fraudulently suppressed material facts and misrepresented the completion and delivery of the project projects to the defendant?

(C) Whether the defendant is liable to pay the amount for which no invoice was ever raised by the plaintiff?

(D) Whether the documents and communication submitted by plaintiff, including invoices, and emails are complete and relevant to substantiate the claims made in the suit?

(E) Whether the plaintiff had delivered the jobs that were instructed at the instant of defendant with full solution at disposal of the defendant?

(F) Whether the plaintiff has proved that the defendant has agreed to pay the amount the amount claim in the plaint ?

31. The reply filed by the Respondent is on page no. 100. The trial Court has rejected the application in *toto* and observed that “*the scope of this suit is limited and these issues are covered in issue No. 1*”.

32. During arguments learned Advocate Kanetkar submitted he is not insisting upon framing of the suggested issue nos. (C) and (F). So I am not considering them while dealing with the issue. He is insisting upon the framing of the suggested **issue no. (A)**.

33. Whereas according to learned Advocate Mr. Wakankar if this Court feels it necessary to frame suggested issue nos. (B), the burden be casted on the defendant. Learned Advocate Mr. Kanetakar fairly admits burden to prove suggested issue no. (B) naturally rest upon the defendant.

34. According to learned Advocate Mr. Wakankar in fact the Summary suit was converted into Spl. Civil Suit No. 1257 of 2024 filed by the administrative decision and in fact on the application of the Defendant, it is again converted into Summary suit as per order passed by the trial Court on 30.08.2024. Its copy is placed on record and marked as 'Annexure-X'.

35. According to learned Advocate Mr. Kanetkar, the application made by his client will not come in their way of insisting upon framing of the issue about maintainability of summary suit. According to him, in the Written statement they have taken stand that the suit claim

cannot be tried as Summary suit because document that is invoices raised by the Plaintiff does not fall within the purview of the Order 37 Rule 1 of the Civil Procedure Code. Whether those documents fall within purview or not can be decided at the conclusion of the trial, but I find merit for suggested issue no. (A).

36. Suggested issue no. (D) pertains to the documents submitted by the plaintiff whether they are complete and relevant. I do not think there is need to frame that issue because issue no. 1 framed by the trial Court covers this suggestion and ultimately it is for the Plaintiff to prove the amount claimed in the suit is covered by the invoices. Trial Court can give findings while disposing of the suit on this aspect.

37. The case of the Plaintiff rest on software development done by them on the instructions of the defendant. In order to discharge the burden as per issue no. 1, Plaintiff is supposed to prove that they have carried out the work design and development as per the instructions by the Defendant. The defendant while conducting the cross-examination can take this ground that those documents are not complete and relevant. Suggested issue no. (E) pertains to fulfillment of the instructions given by the defendant to plaintiff and the Plaintiff has

delivered the jobs as per the instructions of the defendant. I think this also covered by issue no. 1. When the Court framed issues about carrying out the work by the Plaintiff as per the instructions of the defendants, it includes the delivery of the jobs as suggested in issue no. (E).

38. Question of framing of issue arises when one fact is pleaded, and it is denied by other side. There need not be issue on each and every averment and denial. Broadly, all the aspects suggested by the defendant in Issue Nos. D and E are covered by issue No. 1.

39. With the above observation, I do not think any modification is required. Hence, the following order is passed:-

ORDER

- (i) The objection about discarding the additional affidavit is not sustained.
- (ii) The objection as to production of the additional documents is not sustained.
- (iii) However if Plaintiff desires the Trial Court to consider these invoices/documents, they are at liberty to file additional affidavit mentioning and clarifying that the amount covered

by seven invoices is included in the suit claim and whether it is outside the plea taken about earlier payment.

(iv) Plaintiff is at liberty to file affidavit alongwith invoices.

If such affidavit is filed trial Court to hear both the sides and decide about production of relevant documents.

(v) About recasting of issues following order is passed:-

(a) Trial Court to frame suggested **issue no. (A)**.

(b) Trial Court also to frame suggested issue no. (B) but by putting the burden on defendant.

(c) subject to observations made in remaining issues, the prayer is disposed of.

40. For the above observations, Writ petition is disposed of.

41. The trial Court to give priority to this matter and try to dispose of the suit within the time limit extended by this Court.

[S. M. MODAK, J.]