



2024:DHC:4778



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

% ***Judgment reserved on: 11.03.2024***
Judgment pronounced on: 27.06.2024

+ CM(M) 146/2024, CM APPL. 4530/2024

SAPAN AHLAWAT & ANR.

..... Petitioners

Through: Mr. Mandeep Baisla and Mr.
Dhananjay, Advs.

versus

MOHAN CLOTHING COMPNAY PVT. LTD. Respondent

Through: Mr. Naresh Gupta, Adv.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The petitioners are aggrieved by the order dated 21.12.2023 passed by the learned District Judge (Commercial Courts-04), Central District, Tis Hazari Courts, New Delhi (hereinafter referred to as 'Trial Court') in CS DJ 2070/2018, titled as "*Mohan Clothing Company Pvt. Ltd. vs. Sapan Ahlawat & Anr.*" whereby the learned Trial Court dismissed the application filed by the petitioners herein under Order VIII Rule 1A (3) of Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") seeking leave of the Court to produce additional documents.
2. Petitioners herein are the defendants and the respondent herein is the plaintiff in CS DJ 2070/2018 which is pending adjudication before the learned Trial Court.



2024:DHC:4778



3. The factual background leading to institution of the present petition reveals that petitioner no.1 is the sole proprietor, carrying on the business of readymade garments under the name of M/s Anie Smith Retail India, the petitioner no.2 company. On the other hand, the respondent is a corporate entity engaged in the manufacturing and retail sale of apparels and accessories under its brand name “Blackberrys”.

4. On 02.07.2018, the respondent filed a suit against the petitioners for the recovery of Rs. 14,36,441/- before the learned Trial Court. Thereafter, summons were issued and subsequently, the petitioners filed their written statement on 20.09.2018. However, the learned Trial Court vide order dated 22.11.2018 observed that the written statement required clarifications, as the pleadings of the petitioners in the written statement and their submissions before the Court were not in harmony.

5. On 10.12.2018, the petitioners moved an application under Order VI Rule 17 read with Section 151 CPC seeking amendment of the written statement along with relevant documents. Vide order dated 16.10.2019, the learned Trial Court dismissed the aforesaid application. The said order attained finality as the petitioners did not file an appeal against the said order.

6. Subsequently, the petitioners filed an application under Section 151 CPC to direct the respondent to place certain documents on record which was dismissed by the learned Trial Court on 23.02.2023. Additionally, the learned Trial Court framed issues based on the pleadings of the parties and listed the matter for recording the evidence of the respondent herein. On 15.09.2023, the evidence of the respondent was closed in affirmative and



the matter was put up for recording of defendant's evidence. Thereafter, the learned Trial Court closed the right of the petitioners herein on 02.11.2023.

7. Aggrieved by the said order, the petitioners preferred a petition bearing No. CM(M) 1962/2023 before this Court. By an order dated 18.12.2023, this Court allowed the petition and opened the right of the petitioners to lead defendant's evidence, contingent upon payment of previous costs of Rs. 9,000/- and additional costs of Rs. 25,000/- in favor of the respondent.

8. On 21.12.2023, the petitioners filed an application under Order VIII Rule 1A (3) CPC seeking the leave of the Court to produce additional documents crucial for the just determination of the case. These documents comprise of email correspondences exchanged between the parties during the business proceedings in 2016-2017.

9. The learned Trial Court vide order dated 21.12.2023, dismissed the aforesaid application on the ground that the petitioners failed to provide any compelling reason for not filing the application earlier, despite their awareness of the importance and existence of these documents. Additionally, the learned Trial Court held that the application was deliberately filed at the fag end of the matter, seemingly to prolong the disposal of the case. The petitioners are aggrieved by the said order and have assailed the same before this Court by filing the present petition under Article 227 of the Constitution of India.

10. Learned counsel for the petitioners submitted that technical and procedural hurdles should not impede the Court in the pursuit of substantial justice. If a procedural violation does not significantly prejudice the opposing party, the Courts should prioritize substantial justice over strict



adherence to procedural and technical rules. Therefore, the Courts should adopt a lenient view when an application is filed for production of the documents under Order VIII Rule 1A (3) CPC. Reliance is placed on the judgment of the Hon'ble Supreme Court in *Sugandhi vs. P. Raj Kumar*, **2020 SCC OnLine SC 870**.

11. Learned counsel also submitted that the non-production of the documents was not intentional and the petitioners had provided cogent reasons for not producing them along with the written statement. It is submitted that these documents are necessary for arriving at a just decision in the suit and were initially missing but were only traced at a later stage.

12. Learned counsel for the petitioners submitted that the petitioners filed an amended written statement under Order VI Rule 17 CPC because some of the documents were not found earlier. However, the learned Trial Court dismissed the said application on 16.10.2019. Further, it is submitted that the petitioners could not file an appeal against the said order due to the inefficiency of their previous counsel and the outbreak of Covid-19.

13. Learned counsel further submitted that the learned Trial Court failed to consider that the petitioners had no option but to wait for their turn to lead evidence and to file an application under Order VIII Rule 1A (3) CPC to seek leave from the Court to present additional documents. However, when the said application was preferred before the learned Trial Court, it was dismissed without due consideration of the crucial fact that these documents are essential for the proper adjudication of the matter.

14. Learned counsel for the petitioners submitted that the observation made by the learned Trial Court stating that the petitioners did not mention about the documents in their written statement, overlooks the fact that the



petitioners had briefed their previous counsel about the complete facts and circumstances of the present matter. Unfortunately, the petitioners were not properly guided, resulting in the filing of a written statement by the previous counsel without any accompanying documents. Upon realizing this oversight, the petitioners promptly provided the complete case details before the learned Trial Court. Subsequently, the learned Trial Court vide order dated 22.11.2018 granted the petitioners an opportunity to file an appropriate application to address this issue.

15. Controverting the submissions made on behalf of the petitioners, the learned counsel for the respondent submitted that the present case is governed by the mandate of Commercial Courts Act, 2015. Order XI CPC which delineates the procedure and timeline for filing of documents by the parties involved in a commercial dispute. Beyond the period stipulated for filing the documents in the Act, the same can be filed at a subsequent stage only after the leave of Court. In the present case, the petitioners want to bring the documents on record which have neither been mentioned in their written statement nor any reliance has been placed by them thereof. Moreover, no reason, much less any reasonable cause has been established by the petitioners for nondisclosure of the said documents along with the written statement. It is further submitted that the learned Trial Court has correctly examined that no cause, let alone reasonable cause has been established by the petitioners therefore, there is no reason for allowing to bring on record such documents at a belated stage.

16. Learned counsel also submitted that permitting a party to file additional documents at any stage would render Order XI CPC, as applicable to commercial suits, meaningless.



17. Learned counsel for the respondent submitted that allowing the present petition would defeat the very purpose of the Commercial Courts Act, 2015 which aims for speedy trials. Moreover, it would cause significant prejudice to the rights of the respondent, who has been diligently pursuing the matter. Furthermore, it would amount to granting premium over the negligence of the petitioners who only want to delay the adjudication of the present case.

18. Learned counsel also submitted that if the petitioners are allowed to bring these documents on record, this will not only change the entire course of trial but also go against the order dated 18.12.2023 passed by this Court wherein, the petitioners were granted only one opportunity to examine Mr. Sapan Ahlawat and after that the matter was to proceed for final arguments.

19. Learned counsel for the respondent submitted that the scope of powers of this Court is very limited under Article 227 of Constitution of India. In the present case, the petitioners have failed to show any error apparent on the face of the record and are instead trying to find remedy and take shelter of his own negligence, while also imputing allegations on the previous counsel, which cannot be permitted. Reliance is placed on the judgments of this Court as follows:

- a) *Shri Mukesh Kumar vs. Smt. Kamlesh Devi & Anr, 2022 SCC OnLine Del 624* and *Kailash Sewani vs. Manish Kumar Chaudhary, 2022 SCC OnLine Del 2533.*
- b) *Nitin Gupta vs. Texmaco Infrastructure and Holding Limited, 2019/DHC/2351.*
- c) *Bela Creation Pvt. Ltd. Versus Anuj Textiles, MANU/DE/1651/2022.*



- d) *Entertainment Network (India) Ltd. vs. HT Media Limited*, MANU/DE/3186/2022.
- e) *Saregama India Limited vs. Zee Entertainment Enterprises Limited*, MANU/DE/2780/2023.
- f) *Sudhir Kumar vs. Vinay Kumar G. B.*, MANU/SC/0650/2021.

20. Needless to say, the Commercial Courts Act, 2015 being a special statute must operate with full thoroughness in respect of commercial suits. The Court cannot be oblivious of the objects and reasons for which the Commercial Courts Act was enacted. The Statement of Objects and Reasons of the Commercial Courts Act specifically refers to the need for speedy disposal of commercial disputes of specific value. In order to achieve the said object, various provisions of the Civil Procedure Code, 1908 has been amended and made applicable to the commercial suits.

21. Order XI Rule 1(7) CPC stipulates that the defendant is required to make a declaration on oath that all the documents in his power, possession and custody have been disclosed. Additionally, Order XI Rule 1(10) CPC mandates that the defendant cannot rely on documents within his power, possession, or control if not disclosed along with the written statement, except by the leave of Court.

22. It is not disputed that the respondent has not averred anything about the documents i.e. emails exchanged between the parties in the year 2016 and 2017 in his written statement. Undoubtedly, the petitioners have lost their chance to rebut the same in the replication and in the evidence led by them, which has prejudiced the petitioners. Additionally, the petitioners filed an application under Order VI Rule 17 CPC to amend the written



statement because some of the documents were not found earlier which the petitioners wanted to place on record along with the amended written statement. However, the amendment was declined by the learned Trial Court and the order has attained finality.

23. Furthermore, the petitioners have also not assigned any cogent reason for not filing the application to bring the additional documents on record at an earlier stage which they want to bring on record at the fag end of the case. It is to be noted that the petitioners are making an endeavor to bring the additional documents on record in the absence of any pleadings. The law has been well-settled that in the absence of pleadings, any amount of evidence will not help the party.

24. Reliance is placed on the judgment in the case of ***National Textile Corporation Limited v. Naresh Kumar Badrikumar Jagad: (2011) 12 SCC 695***, the Hon'ble Supreme Court has reiterated the said position of law and held as under:

“12. Pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial. Therefore, the pleadings are more of help to the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that “as a rule relief not founded on the pleadings should not be granted”. A decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ.

13. In Ram Sarup Gupta (dead) by L.Rs. v. Bishun Narain Inter College, (1987) 2 SCC 555 : AIR 1987 SC 1242, this Court held as under:

“..... in the absence of pleadings, evidence if any, produced by the parties cannot be considered..... no party should be permitted to



travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it.”

Similar view has been reiterated in Bachhaj Nahar v. Nilima Mandal, (2008) 17 SCC 491 : AIR 2009 SC 1103.

14. In Kashi Nath (Dead) through L.Rs. v. Jaganath, (2003) 8 SCC 740, this Court held that “where the evidence is not in line of the pleadings and is at variance with it, the said evidence cannot be looked into or relied upon.”

Same remain the object for framing the issues under Order XIV CPC and the court should not decide a suit on a matter/point on which no issue has been framed.

15. In Syed and Company v. State of Jammu & Kashmir, 1995 Supp (4) SCC 422, this Court held as under:

“Without specific pleadings in that regard, evidence could not be led in since it is settled principle of law that no amount of evidence can be looked unless there is a pleading. Therefore, without amendment of the pleadings merely trying to lead evidence is not permissible.”

16. In Chinta Lingam v. The Govt. of India, (1970) 3 SCC 768 : AIR 1971 SC 474, this Court held that unless factual foundation has been laid in the pleadings no argument is permissible to be raised on that particular point.

17. In J. Jermons v. Aliammal, (1999) 7 SCC 382, while dealing with a similar issue, this Court held as under:

“..... there is a fundamental difference between a case of raising additional grounds based on the pleadings and the material available on record and a case of taking a new plea not borne out of the pleadings. In the former case no amendment of pleading is required, whereas in the latter it is necessary to amend the pleadings...The respondents cannot be permitted to make out a new case by seeking permission to raise additional grounds in revision.”

18. In view of the above, the law on the issue stands crystallised to the effect that a party has to take proper pleadings and prove the same by adducing sufficient evidence. No evidence can be permitted to be adduced on a issue unless factual foundation has been laid down in respect of the same.



2024:DHC:4778



19. There is no quarrel to the settled legal proposition that a new plea cannot be taken in respect of any factual controversy whatsoever, however, a new ground raising a pure legal issue for which no inquiry/proof is required can be permitted to be raised by the court at any stage of the proceedings.”

25. Having considered the above, this Court does not find any justification in the arguments addressed on behalf of the petitioners and does not make out any case for this Court, while exercising the supervisory jurisdiction vested in it by Article 227 of the Constitution of India, 1950, to interfere with the approach of the learned Trial Court.

26. There is no infirmity with the impugned order, consequently, the petition as well as pending application stands dismissed.

SHALINDER KAUR, J.

JUNE 27, 2024

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