



2024:DHC:4968



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

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Judgment reserved on: 22.03.2024

Judgment pronounced on: 05.07.2024

+ CM(M) 2205/2024, CM APPL. 18005/2024—stay

CASA 2 STAYS PVT. LTD.

..... Petitioner

Through: Mr. Ankur Mahindro, Mr. Harish
Malik & Mr. Kushal Bhattacharjee,
Advs.

versus

VLCC PERSONAL CARE LTD.

..... Respondent

Through: Mr. Manik Ahluwalia, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The controversy arising from the present petition revolves around the application of the respondent under Order XI Rule 1(5) of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") seeking to bring additional documents on record being allowed by the learned District Judge (Commercial Court - 08), South East District, Saket Courts, New Delhi (hereinafter referred to as 'Commercial Court') in C.S. (COMM) No. 24/2022 titled as "*VLCC Personal Care Ltd. vs Casa 2 Stays Pvt. Ltd.*". The petitioner herein is the defendant and the respondent herein is the plaintiff before the learned Commercial court in the captioned suit which is pending adjudication.
2. The petitioner is a private limited company incorporated under the Companies Act, 2013, engaged in hospitality business and owns a chain of



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hotels operating under its brand name 'Fab Hotels'. Mr. Tushar Chawla, is the Authorized Representative of the petitioner company, approved vide board resolution dated 08.10.2021.

3. The respondent is also a registered company, which is engaged in the business of sale and supply of personal care products for retail as well as for distribution to the chain of Hotels on contract.

4. The factual background in crux is that on 12.06.2017, the respondent entered into an agreement with the petitioner for supply of toiletries to the petitioner on a monthly basis for distribution and utilization of the same in its chain of hotels. However, various disputes arose between the parties, consequently, the respondent filed a commercial suit for recovery of Rs. 53,83,366/- along with future and pendente lite interest @ 24% per annum, against the petitioner. It is stated that the statement of truth as per Order VI Rule 15A and Order X Rule 1 of CPC was also filed with the plaint.

5. Thereafter, as a matter of procedure and defence, the petitioner filed its written statement on 21.11.2022. Subsequent thereto, the respondent on 01.03.2023 moved an application under Order XI Rule 1(5) of CPC to place certain additional documents on record.

6. The petitioner filed its reply to the aforesaid application on 27.04.2023, whereby, it opposed the additional documents to be taken on record.

7. The learned trial court vide the impugned order dated 31.01.2024 allowed the application of the respondent seeking to place on record the additional documents. Aggrieved by the same, the petitioner has preferred the present petition before this court.



SUBMISSIONS OF THE PETITIONER

8. Mr. Ankur Mahindro, learned counsel for the petitioner submitted that it was only after 14 months from the date of institution of the suit, when the matter was listed for framing of issues and case management hearing, the respondent moved an application under Order XI Rule 1(5) of the CPC to place the additional documents on record and learned Trial Court has erroneously allowed the application on the grounds, which are not tenable under Commercial Courts Act, 2015.

9. Learned counsel submitted that the respondent made a false submission before the learned trial court by stating that the documents were not in possession of the respondent at the time of filing of the suit, whereas in the application before the learned trial court, respondent has averred that the said documents were in its 'regional offices' and being old records, it took time for the respondent to obtain the same. Meaning thereby, that the said documents were in fact in power, possession and custody of the respondent all this while.

10. Learned counsel further submitted that impugned order stands contrary to the procedure under Order XI Rule 1 of CPC and further antithetical to the law laid down by the Apex Court in ***Sudhir Kumar v Vinay Kumar G.B.*** (2021) 13 SCC 71. More so, the learned Trial Court has passed the order in a casual and a perfunctory manner without application of law and following the procedure.

11. It was also submitted that apart from not having filed the documents in the power and possession of the respondent at relevant stage, the attempt made by it to file the same subsequently after 14 months vide its application



under Order XI Rule 1 CPC are irrelevant documents and will in no manner support or enhance the case of the respondent. Further, the letter dated 24.08.2019 purported to be brought on record by the respondent does not find mention in the pleadings or in the list of documents filed by the respondent. More so, the said letter was available within the possession of the management of the respondent but was not filed along with the plaint for the reasons best known to it.

12. It was further submitted that the consolidated summary statements of State wise ledger account are also irrelevant documents as it contradicts the stand of the respondent in its plaint, wherein it has claimed an amount of Rs. 53,83,366/- against the petitioner whereas as per the statement of accounts, an amount of Rs. 53,45,722/- is due on part of the petitioner. The documents being contradictory to the case of the respondent cannot be relied upon.

13. It was submitted that similarly summary statement of the total invoices raised, payment received, credit note and outstanding amount are again not filed at the relevant stage, therefore, cannot be permitted to be placed on record by moving an application under Order XI Rule 1 CPC. Further, same is the fate of unpaid invoices with proof of deliveries and list of unpaid invoices. More so, these documents are not stamped and signed as required under the agreement executed between the parties.

14. Learned counsel submitted that along with the plaint, the respondent had annexed sample unpaid invoices, however, no application seeking leave of the Court was filed for subsequently placing the additional documents on record. On the other hand, in the statement of truth, the respondent



categorically declared on oath that all the documents in power, possession, control and custody pertaining to the facts of the case have been disclosed and furthermore, the respondent do not have any other document in its power, possession, control and custody.

SUBMISSIONS OF THE RESPONDENT

15. Mr. Manik Ahluwalia, learned counsel for the respondent refuted the aforesaid submissions and contented that respondent company had been supplying the personal care products to the chain of hotels owned by the petitioner on PAN India basis, thus, the purchase orders and invoices were available at various offices of the respondent in different parts of the country. At the time of filing of the suit only a few invoices were available with the respondent, which were filed as sample invoices with an undertaking to provide the entire set of invoices at the relevant stage with the leave of the Court. Since the deliveries were done PAN India in multiple, small or large variable quantities and the invoices towards the said transactions being voluminous, the respondent took liberty to attach sample invoices along with the plaint and sought for leave of the Court to allow it to produce the detailed record at the time of evidence or the same to be verified from the software record of the respondent company at the stage of evidence. Hence, the relevant documents were not in power and possession of the respondent, which came to their knowledge and possession at a subsequent stage.

16. The learned counsel further submitted that the documents are necessary for adjudication of the *lis* between the parties, which have been clearly mentioned in the plaint, thus, no prejudice shall be caused to the



petitioner, if the aforesaid documents form part of the record as the said fact and circumstance is within the knowledge of the petitioner. To the contrary, the respondent shall suffer irreparable loss in case the respondent is not permitted to bring on record the relevant invoices along with proof of deliveries for the purpose of supporting its averments in the plaint.

17. Learned counsel for the respondent in support of his contentions has relied upon the judgment of Hon'ble Supreme Court in the case of ***Sugandhi (dead) By Legal Representatives And Another vs. P. Raj Kumar Represented By His Power Agent Imam Oli***: (2020) 10 SCC 706.

18. I have heard the arguments at length on behalf of the parties and perused the record as well as the impugned order.

19. Before advertng to the facts of this case, it is relevant to note that this Court while exercising jurisdiction under Article 227 of the Constitution of India is not expected to examine the decision of the Court below as acting as a Court of first appeal. The supervisory jurisdiction is not to correct an error of fact or a legal flaw thereby substituting its own decision on the facts and conclusion as arrived by the Court below. The importance of Article 227 has been examined by the Hon'ble Supreme Court in ***Celina Coelho Pereira vs. Ulhas Mahabaleshwar Kholkar*** (2010) 1 SCC 217, which held as under:

"The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice."

20. It is further relevant to mention the findings of Hon'ble Supreme



Court in *Puri Investments vs. Young Friends and Co.*,
MANU/SC/0290/2022, which reads as under:-

“14. In the case before us, occupation of a portion of the subject-premises by the three doctors stands admitted. What has been argued by the learned counsel for the appellant is that once the Tribunal had arrived at a finding on fact based on the principles of law, which have been enunciated by this Court, and reflected in the aforesaid passages quoted from the three authorities, the interference by the High Court under Article 227 of the Constitution of India was unwarranted. To persuade us to sustain the High Court's order, learned counsel appearing for the respondents has emphasized that full control over the premises was never ceded to the medical practitioners and the entry and exit to the premises in question remained under exclusive control of the respondent(s)-tenant. This is the main defence of the tenant. We have considered the submissions of the respective counsel and also gone through the decisions of the fact-finding fora and also that of the High Court. At this stage, we cannot revisit the factual aspects of the dispute. Nor can we re-appreciate evidence to assess the quality thereof, which has been considered by the two fact-finding fora. The view of the forum of first instance was reversed by the Appellate Tribunal. The High Court was conscious of the restrictive nature of jurisdiction under Article 227 of the Constitution of India. In the judgment under appeal, it has been recorded that it could not subject the decision of the appellate forum in a manner which would project as if it was sitting in appeal. It proceeded, on such observation being made, to opine that it was the duty of the supervisory Court to interdict if it was found that findings of the appellate forum were perverse. Three situations were spelt out in the judgment under appeal as to when a finding on facts or questions of law would be perverse. These are:--

- (i) Erroneous on account of non-consideration of material evidence, or*
- (ii) Being conclusions which are contrary to the evidence, or*
- (iii) Based on inferences that are impermissible in law.”*

21. Hence, the law has been settled that while considering the relief claimed under Article 227 of the Constitution of India, the High Court has to bear in mind the limited supervisory jurisdiction to be exercised by it.

22. 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 have been amended and made applicable to the commercial suits.

23. It is equally true that while allowing an application under Order XI Rule 1(5) CPC, it is pertinent to look for a reasonable cause, if it has been specifically pleaded and a good cause is made out, then the litigant could be permitted to place on record documents at a later stage.

24. The Hon'ble Supreme Court in ***Sudhir Kumar Alias S. Baliyan versus Vinay Kumar G.B.*** (supra) considered the scope under Order XI Rule 1 to 5 CPC, as amended by Commercial Courts Act, 2015 and held as under:-

“9.3 It is true that Order 11 Rule 1 CPC as applicable to the commercial suits brought about a radical change and it mandates the plaintiff to file a list of all documents, photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint and a procedure provided under Order 11 Rule 1 is required to be followed by the plaintiff and the defendant, when the suit is the commercial suit.

9.4. However, the additional documents can be permitted to be brought on record with the leave of the court as provided in Order 11 Rule 1(4). Order 11 Rule 1(4) provides that in case of urgent filings, the plaintiff may seek leave to rely on additional documents as part of the above declaration on oath [as provided under Order 11 Rule 1(3)] and subject to grant of such leave by court, the plaintiff shall file such additional documents in court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in



its power, possession, control or custody.

9.5. Order 11 Rule 1(5) further provides that the plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint. Therefore on combined reading of Order 11 Rule 1(4) read with Order 11 Rule 1(5), it emerges that (i) in case of urgent filings the plaintiff may seek leave to rely on additional documents; (ii) within thirty days of filing of the suit; (iii) making out a reasonable cause for non-disclosure along with plaint.”

25. It was further held as under:

“9.5 that Order 11 Rule 1(5) further provides that the plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint. Therefore on combined reading of Order 11 Rule 1(4) read with Order 11 Rule 1(5), it emerges that (i) in case of urgent filings the plaintiff may seek leave to rely on additional documents; (ii) within thirty days of filing of the suit; (iii) making out a reasonable cause for non-disclosure along with plaint.

Therefore a further thirty days' time is provided to the plaintiff to place on record or file such additional documents in court and a declaration on oath is required to be filed by the plaintiff as was required as per Order 11 Rule 1(3) if for any reasonable cause for non-disclosure along with the plaint, the documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint. Therefore the plaintiff has to satisfy and establish a reasonable cause for non-disclosure along with plaint. However, at the same time, the requirement of establishing the reasonable cause for non-disclosure of the documents along with the plaint shall not be applicable if it is averred and it is the case of the plaintiff that those documents have been found subsequently and in fact were not in the plaintiff's power, possession, control or custody at the time when the plaint was filed. Therefore Order 11 Rule 1(4) and Order 11 Rule 1(5) applicable to the commercial suit shall be applicable only with respect to the documents which were in plaintiff's power, possession, control or custody and not disclosed along with plaint. Therefore, the rigour of establishing the reasonable cause in non-disclosure along with



plaint may not arise in the case where the additional documents sought to be produced/relied upon are discovered subsequent to the filing of the plaint.”

26. In light of the above principle of law, the findings of learned Trial Court are taken up for consideration. The learned Trial Court while permitting the respondent to place the additional documents on record under Order XI Rule 1(5) and Rule 1(1)(c)(ii) CPC observed that the documents sought to be placed on record by the respondent are material and relevant to decide the matter in controversy between the parties. It allowed the documents to form part of record as the issues in the case were yet to be framed and thus, no prejudice would have been caused to the rights of the petitioner as it would have an opportunity to controvert the same during the course of trial. The learned Trial Court also found justification given by the respondent in the application for not filing the documents at the time of filing of the plaint.

27. Now, coming back to the facts of the present case, it emerges from the application under Order XI Rule 1(5) & Rule 1(1)(c)(ii) CPC of the respondent that it seeks to bring on record the unpaid invoices along with the proof of deliveries for purpose of supporting the claim of Rs.53,83,366/- and copy of a letter dated 24.08.2019 issued by petitioner to the respondent as an acknowledgment of the outstanding amount of Rs. 50,94,344.64 payable to the respondent as on 31.03.2019.

28. The application of the respondent is silent about the documents i.e. consolidated summary statement of state wise ledger account, summary statement of the total invoices raised, payment received, credit note and outstanding amount to be brought on record but mentions only about three



categories of documents i.e. unpaid invoices, proof of deliveries and a letter dated 24.08.2019. Thus, the application under Order XI Rule 1(5) CPC is vague as it does not specify all the additional documents that respondent wishes to place on record. Needless to say, the petitioner has mentioned about aforesaid additional documents in its reply.

29. The respondent has further relied upon paragraph 9 of the plaint to place emphasis on the argument that it had sought for the leave of the Court in the plaint by mentioning as under:

“9. That the Plaintiff duly supplied agreed quantities of goods to the various chains of hotels namely "Fab Hotels" in different cities against the purchase orders and regular invoices were raised by the Plaintiff towards delivery of each batch of toiletries. That since the deliveries. were done PAN India in multiple small or large variable quantities and the invoices towards the said transactions volume up to thousands of documents, the plaintiff is taking the liberty to attach sample invoices along with the plaint and craves the leave of this Hon'ble Court to allow the plaintiff to produce the detailed record at the time of evidence or as the same to be verified from the software records of the plaintiff company at the stage of evidence. A copy of the sample unpaid invoices raised by the plaintiff against the goods delivered to the defendant PAN India is annexed herewith and marked as Annexure P/4.”

30. The respondent submitted that therefore, the respondent was candid in its approach by bringing forth the reason in the plaint itself that due to voluminous record, it preferred to produce the detailed record at the time of recording of the evidence or the same could be verified from software records of the respondent at the time of evidence and it only filed sample invoices and craved for leave of the Court to produce the entire record subsequently. In contrariety, in its application, the respondent has submitted that the entire record could not be produced as the supply and distribution of the products by the respondent company is decentralised, which is fulfilled



by Carrying and Forwarding Agents (hereinafter referred as “CFA”) in the respective States. Thus, the invoices had to be obtained from various CFA warehouses of the respondent situated in different States in India as the deliveries were made through different offices and warehouses of respondent located PAN India. With respect to the letter dated 24.08.2019, the respondent has raised the plea that it was not within the knowledge of the employees of the respondent company that such a letter with respect to confirmation of petitioner’s account existed, which could not be traced by the current management despite practising due diligence, therefore, it could not be placed on record with the plaint.

31. It is worth to mention, the respondent has not pressed for leave of the Court at the time of the suit was filed before the learned Trial Court. Had that been the case, the learned Trial Court may have granted at the most, a further period of thirty days to the respondent to place on record the additional documents, thereafter, the respondent would have been required to file a declaration on oath in accordance with Order XI Rule 1(3) CPC.

32. It is noted from the record, that the respondent in its statement of truth appended with the plaint, has categorically deposed “I do not have any other document in my power, possession, control or custody”.

33. Further, in view of paragraph 9 of the plaint, no application has been filed to seek extension of time to place the additional documents. Also, the respondent has not pleaded in its application that the additional documents were not in its power, possession, control or custody earlier and thus were not produced along with the suit. To the contrary, the respondent has claimed vide its application to place additional documents on record that



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invoices had to be obtained from CFAs in their respective states, hence were not in possession of the respondent.

34. Noticeably, the submission of the respondent does not appear to be convincing since while preparing the plaint, the respondent would have checked its records as averred in the plaint that petitioner had made a payment of Rs. 2,81,76,502/- and the outstanding amount that remained to be paid by the petitioner amounted to Rs.53,83,366/- meaning thereby, the respondent would have relied upon its statement of account to ascertain the amount which remained unpaid and was required to be recovered from the petitioner. Thus, the statement of the account would have contained all the details of the paid / unpaid invoices and respondent could have easily collected the invoices and other documents before filing the suit. It is also not the case of the respondent that there was an urgency in filing the suit, which prevented it from procuring the relevant documents from CFAs to be filed alongwith the suit. As noticed above, in respect of the two statements of accounts purported to be filed as additional documents are not addressed in the application at all. Hence, there is merit in the submission of learned counsel for the petitioner that there is error in exercising its jurisdiction by the learned Trial Court, warranting supervisory correction by this Court under Article 227 of the Constitution of India.

35. Viewed thus, the impugned order is entirely against the compliance of provision under Order XI Rule 5 CPC and spirit of Commercial Courts Act, 2015, which is accordingly set aside and the documents brought on record vide application of the respondent under Order XI Rule 1(5) CPC are directed to be taken off the record.



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36. Insofar as the letter dated 24.08.2019 is concerned, though the respondent has not pleaded the same in the plaint, it will not preclude it from putting the letter to the petitioner's witness during evidence.

37. Accordingly, the petition, along with pending application, is disposed of with the observations made hereinabove.

SHALINDER KAUR, J.

JULY 05, 2024/ss