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

% ***Date of decision: 23th September, 2024***

+ **CM(M) 2390/2024 & CM APPL. 55612-55613/2024**

MS RATAN CHANDRA SPICES AND FOOD PRODUCTS PVT LTD
.....Petitioner

Through: Ms. Rakhi Banerjee, Advocate.

versus

KAMINI BHATIA PROPRIETOR. OF MS MAHIMA HERBS AND ANR & ANR.
.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is defendant No.1 before the learned Trial Court and is defending a commercial suit seeking recovery of around Rs.5 lacs.
2. There were commercial transactions between the parties and according to plaintiff, the cheques issued by the defendants, when presented, returned dishonoured for "funds insufficient". It seems that the case of the defendant/petitioner is that the spices supplied to them were not of the quality, as agreed between the parties.
3. During pendency of the above suit, defendant No.1 (petitioner herein) moved an application under Order XI Rule 5 and 6 read with Section 151 CPC praying therein that the plaintiff be directed to place on record the communication made through SMS/WhatsApp chat/calls between them for the relevant period i.e. July 2019 to December, 2019.



4. Interestingly, a request was also made that the concerned police station may also be directed to produce the phone call record and communication between them for the said period.
5. Learned Trial Court vide order dated 30.11.2023 dismissed the above said application.
6. Such order is under challenge.
7. The next date is 24.01.2025 but the present application has been moved seeking early hearing.
8. Keeping in mind the Board position, it is not possible to prepone the date. However, since the learned counsel for the petitioner has insisted, the Court has heard the final arguments today itself.
9. The Court has gone through the reasoning given by the learned Trial Court which is found recorded in para 5, 6 and 7 of the impugned order, which read as under:-

“5. Perusal of the application filed by defendant would show that the application is vague in nature in as much as it does not specify the documents required to be produced by the plaintiff. Only a vague description is given requiring the plaintiff to produce all communications made through SMS, whatsapp chats/calls between defendant no. 1 and Puneet Bhatia during the period July, 2019 to December, 2019. Neither the dates nor time of such communications have been mentioned by the defendant in the entire application. The application appears to be more in the nature of roving and fishing enquiry rather than production of specific documents by the plaintiff, which in my considered opinion is not permissible under the law. Once the defendant is asking production of certain documents from the plaintiff, it is the duty of the defendant to specify the documents which are required to be produced by the plaintiff. The plaintiff cannot be expected to produce unspecified documents merely on the asking of the defendant.



6. *Another reason for rejecting the application is that plaintiff in its reply has specifically stated that the plaintiffs are not in possession of the communications, whatsapp message and SMS sought by the defendant as the plaintiff and her husband have already changed their cell phone twice. Hence, in these circumstances, no directions can be issued to the plaintiff for production of the communications through SMS, whatsapp chats/whatsapp calls between defendant no. 1 and Sh. Puneet Bhatia, husband of the plaintiff.*

7. *The second prayer in the application is for directing the concerned police station to produce the phone call records and communications made by whatsapp chats/calls between defendant no. 1 with Lal Acharaya, Vikas Gupta and Sh. Puneet Bhatia during July, 2019 to December, 2019. This prayer of the defendant is also not maintainable as under Order 11 Rule 5 & 6 CPC directions can only be issued to the parties to the suit to produce the relevant documents. The local police is not a party in the suit and therefore, no directions can be given to the police in exercise of power under Order 11 Rule 5 & 6 CPC. Even otherwise, the defendant has alleged the communications between defendant no. 1 and Puneet Bhatia, Sh. Lal Acharaya and Vikas Gupta in its WS. Hence, defendant is required to prove the same either by producing the relevant documents or by summoning the witnesses at the stage of trial for producing and proving the relevant documents."*

10. It is thus very much evident that even before the learned Trial Court, the response of the plaintiff was very specific and they submitted that even they did not have any such SMS or WhatsApp communication with them on account of the fact that they had changed their cell phone twice and, therefore, they were unable to produce any such communication.

11. Interestingly, the defendant (petitioner) also does not have any such record as according to them, they had deleted those chats.

12. Be that as it may, once the plaintiff had been able to indicate that



they were not having in their possession the above said communication, the learned Trial Court rightly held that no further directions could be issued to the plaintiff for production of such communication.

13. Reliance on order dated 30.10.2023, passed by Hon'ble Supreme Court in *Rajeswari vs. Union of India* in W.P.(C) No.699/2021 is misplaced in the present context.

14. Learned counsel for the petitioner has, very fairly, stated that as regards the request seeking directions to the police with respect to the production of alleged communication, she does not press the same any more.

15. In view of the above, there is no merit in the present petition. The petition is, accordingly, dismissed.

16. The next date of 24.01.2025 is cancelled.

(MANOJ JAIN)
JUDGE

SEPTEMBER 23, 2024/st