



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

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Judgment reserved on: 15.01.2024

Judgment pronounced on: 11.03.2024

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CM(M) 1376/2023

SUDHIR POWER PROJECT LTD.

..... Petitioner

Through: Mr. Manish Kumar,
Advocate.

versus

PRIME MEIDEN PVT. LTD.

..... Respondent

Through: Mr. Rajesh Rai and Mr.
Rohan Rai, Advs.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The present petition arises out of the impugned order dated 14.08.2023 passed by the learned District Judge (Commercial) – 03, South-East, Saket Courts, Delhi (hereinafter as “Trial Court”) in suit bearing no. CS(COMM) 318/2020 titled as “*M/s Prime Meiden Limited vs M/s Sudhir Power Projects Limited*” whereby the learned trial court dismissed the application filed by the petitioner under Order VIII Rule 1A(3) of Code of Civil Procedure, 1908 (hereinafter as “CPC”) for taking on record additional documents i.e. (i) letter dated 08.07.2022 issued by HSIIDC and (ii) affidavit of admission/denial filed by the petitioner, who is the defendant before the learned trial court. The respondent is the plaintiff in the said proceedings.

2. The limited issue arising out of the present petition revolves around whether the documents sought to be placed on record by the petitioner i.e.



a letter dated 08.07.2022 which was issued after filing of the written statement and the affidavit of admission and denial can be allowed at a later stage.

3. The petitioner, a company incorporated under the Companies Act, 1956, with its registered office at International Trade Tower, Nehru Place, New Delhi, 110005, is engaged in the business of manufacturing, testing etc, of the silent Diesel Generator Sets, etc.

4. Conversely, the respondent is a Company engaged in the business of manufacturing of Industrial Electrical Transformers.

5. The petitioner asserts that on 20.05.2014, it placed two purchase orders bearing numbers 6311 & 6312 upon the Respondent for supply of 12.5 MVA, 50 Hz, 33/11KV Delta/Star, Vector Group Dyn11, amongst other things and provided specifications as per Haryana State Industrial and Infrastructure Development Corporation Ltd (hereinafter as “HSI IDC”) requirements, the end customer of the petitioner.

6. Disputes arose between the parties during the course of business in view of the respondent’s failure to adhere to the terms stipulated in the purchase orders, causing delays in the work order assigned by the petitioner’s end customer HSI IDC. Consequently, the petitioner incurred liquidated damages amounting to 10% of the contract value from HSI IDC. Pursuant to the terms of the contract, the respondent was liable to bear this liability. Thereafter, the petitioner invoked bank guarantees furnished by the respondent on 24.10.2017. As a response, the respondent filed a suit for injunction along with an application for interim relief seeking to



restrain the petitioner from invoking bank guarantee, which came to be dismissed by the court of first instance and also by the appellate court in appeal.

7. Subsequent thereto, the respondent filed a suit before the learned trial court on 22.10.2020 for recovery of Rs. 48,90,000 in liquidated damages against the Petitioner. Pre-mediation was sought by the parties after the suit was filed. Upon receiving the summons, the petitioner filed its written statement on 29.04.2022 pleading the imposition of liquidated damages albeit without submitting supporting documents.

8. Thereafter, respondent filed an application under Order VI Rule 17 CPC for amendment of plaint, which was allowed vide order dated 27.02.2023 after which an amended written statement was filed by the petitioner on 25.03.2023. Issues were framed and parties were directed to appear before the appointed Local Commissioner to record the evidence vide orders dated 27.03.2023 and 06.04.2023, respectively.

9. Thereafter, the letter dated 08.07.2022 from HSIIDC imposing liquidated damages and the affidavit of admission/denial were subsequently discovered to be not on record during the cross-examination before the local commissioner on 12.05.2023. To remedy the situation, petitioner filed an application under Order VIII Rule 1A (3) CPC to place the aforesaid document on record. The respondent filed its reply to the said application and vide the impugned order the learned trial court dismissed the application. Aggrieved by the aforesaid position, the petitioner has preferred the present petition.



Submissions of the parties

10. The learned counsel for the petitioner submitted that admittedly, the letter sought to be placed on record was not in possession of the petitioner at the time of filing of the written statement since it was issued after filing of the written statement. It was submitted that the said letter dated 08.07.2022 was a relevant material for the adjudication of the disputes between the parties. Reliance was placed on the judgment of the Hon'ble Supreme Court in *Sudhir Kumar @ S Baliyan vs. Vinay Kumar G.B.* (2021) 13 SCC 71 and *Sugandhi (Dead) by L.Rs and Ors. vs P. Rajkumar* (2020) 10 SCC 706.

11. Further reliance was placed on *Vikram Roller Flour Mills Ltd. v. KRBL Ltd.* MANU/DE/4990/2018 and *Levaku Pedda Reddamma & Ors vs Gottumukkala Venkata Subbamma & Ors.* Civil Appeal no. 4096/2022.

12. It was submitted that identical facts and situation have arisen in the present case and despite citing the aforesaid authorities before the learned trial court, it erred in not allowing the application of the petitioner.

13. Concluding the arguments, it was submitted that there is no statutory bar in taking on record the additional documents and affidavit of admission/denial and there is an inherent power of the court under Section 151 CPC to do complete justice.

14. Negating the aforesaid submissions, the learned counsel for respondent submitted that the written statement was filed by the petitioner on 29.04.2022 and averments in the written statement do not contain any



mention of the aforesaid letter. Even if it is agreed that the alleged letter was issued by HSIIDC after filing of written statement, the petitioner should not have waited till recording of evidence in May, 2023 to bring the said letter on record. Moreso, the petitioner did not avail an opportunity to file the said document along with its amended written statement on 25.03.2023. Thus, this manifests the casual approach of the petitioner and the law does not help an irresponsible litigant.

15. The learned counsel submitted that respondent had filed its affidavit of admission/denial pursuant to order dated 18.01.2023, however, the petitioner did not file the affidavit of admission/denial thereafter which they cannot be permitted to do so at a belated stage when the evidence of the respondent is to commence. The admission/denial of documents has lost its significance, at this stage of the trial, therefore, the learned Trial Court rightly declined the prayer of the petitioner to place the admission/denial affidavit also on record.

Analysis

16. At the outset, it would be relevant to refer to the impugned order whereby the learned Trial Court has dismissed the application of the petitioner which reads as under:

"The case is already at the stage of recording of evidence, issues have already been framed, therefore, no ground made out for filing affidavit of admission/denial of documents as well as the letter dated 08.07.2023 from HSIIDC on record. Accordingly, the present application is dismissed and disposed of."



17. The position of law with respect to filing of documents at a belated stage has been considered by Hon'ble Supreme Court in following judgments.

18. In the case of ***Vikram Roller Flour Mills Ltd. v. KRBL Ltd.*** (Supra), the Hon'ble Supreme Court held as under:-

"14. This Court is of the view that the documents sought to be placed on record by the plaintiff are relevant to determine the real issue between the parties with respect to the period when they adopted and used the trade-mark "INDIA GATE".

15. There is certainly delay on the part of the plaintiff to produce the documents but the plaintiff has explained the same. The plaintiff plea that the said documents were stacked beneath the old packing material stored in the godown and could be traced only on 10th November, 2017 is plausible considering that the plaintiff does not gain anything by not filing these documents earlier or by withholding the said documents. The aforesaid documents also do not appear to be forged and fabricated; Of course, the plaintiff will have to prove the said documents in accordance with law. The judgments relied upon by counsel for the defendant is in the facts of those cases."

19. Further, it is relevant to mention case of ***Sugandhi (Dead) by L.Rs and Ors. vs P. Rajkumar*** (Supra) wherein the Hon'ble Supreme Court observed:

"8. Sub-rule (3), as quoted above, provides a second opportunity to the Defendant to produce the documents which ought to have been produced in the court along with the written statement, with the leave of the court. The discretion conferred upon the court to grant such leave is to be exercised judiciously. While there is no straight jacket



formula, this leave can be granted by the court on a good cause being shown by the Defendant.

9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents Under Sub-rule (3).”

20. In the present case, the petitioner has explained the delay in filing the letter dated 08.07.2022, that it was not available at the time of filing of written statement on 29.04.2022 and was issued only thereafter on 08.07.2022, thus sufficient reason has been shown by the petitioner in not filing the said letter with the written statement. Undoubtedly, it was not filed immediately after issuance of the letter and was filed at the stage of recording of evidence of petitioner, however, the same shall not cause any prejudice to the respondent as it would have sufficient opportunity to rebut the same during the recording of the evidence. Moreso, the written statement mention facts regarding the said letter and petitioner claims, it was under bonafide impression that the same has already been filed, however, it was only revealed at the stage of recording of evidence that the said documents were left to be placed on record. Therefore, the letter dated 08.07.2022 imposing liquidated damage is allowed to be taken on



record. Insofar, the submission of the petitioner that admission / denial affidavit be allowed to form part of the record, is not tenable as the issues have already been framed and the case is ripe for leading evidence of the parties. Thus, no useful purpose will be served to rewind the case to the stage of admission / denial of documents. In conspectus of above, the petition is accordingly disposed of.

SHALINDER KAUR, J.

MARCH 11, 2024