



2024:DHC:4782



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

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Judgment reserved on: 28.03.2024

Judgment pronounced on: 27.06.2024

+ CM(M) 1754/2023

BHARAT AGARWAL & ORS.

..... Petitioners

Through: Mr. Tarun Singla and Mr. Vasu
Goyal, Advts.

versus

NMDC LIMITED

..... Respondent

Through: Mr. Ranjeet Singh, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The bone of contention in the present suit pertains to dismissal of an application of the petitioners under Order XI Rule 1(5) of the Code of Civil Procedure, 1908 (hereinafter "CPC") seeking to place on additional documents vide order dated 28.08.2023 in the commercial suit i.e. CS(COMM) No. 788/2022 which is pending adjudication before the learned District Judge, Commercial Court-03, Patiala House Courts, New Delhi (hereinafter "Commercial Court"). The said commercial suit is titled as "*Bharat Agarwal vs NMDC Ltd.*".

2. It will be apposite to elucidate relevant facts being, that the petitioners are the owners of the suit property bearing No.109-109A, First Floor, Surya Kiran Building, 19, Kasturba Gandhi Marg, New Delhi 110001 admeasuring 1670 square feet. The respondent has been a tenant in the suit property since 1972, with the last lease deed being executed on 28.08.2017 for the period from 01.04.2016 to 31.04.2020.



3. The respondent being the tenant, vide the letter dated 10.06.2020 communicated its intention to vacate the suit property by 31.08.2020 and also requested the petitioners that a no dues certificate be issued to it stating that the petitioners have no further claim from it with respect of the tenanted premises.

4. The petitioner no. 2 visited the tenanted premises on 31.08.2020. However, upon inspection, he found extensive damage done by the respondent to the suit property. Thus, the petitioner no.2 refused to take possession of the said property in view of the damages and invoked Clause 2.8 of the lease deed executed between the parties, which pertained to restoration of the tenanted premises by the lessee to its original condition as was delivered except normal wear and tear to commence the tenancy.

5. Subsequently, the respondent in response, carried out some repair work in the tenanted premises, which was also examined by the petitioners and duly photographed by the petitioners on 08.09.2020. However, the respondent refused to hand over the possession of the tenanted premises for want of a no dues certificate from the petitioners, despite various letters and notices sent by them stating that they still have claims against the respondent. Thus, the petitioners filed the present suit seeking a decree of possession, money decree for the amount of Rs.1,34,10,100/- towards occupation charges from the period of 01.04.2020 till 31.07.2022 and mesne profits up to the date of institution of the suit till the date of handing over the suit property.

6. The respondent filed its written statement on 19.12.2022. Notably, as per the directions of this court vide order dated 15.05.2023 passed in CM(M) No. 810 of 2023 titled as "*Bharat Agawal & Ors vs. NMDC*



Limited” the respondent without prejudice to his rights and contentions had handed over original keys of the tenanted premises to the petitioners whereby the order dated 21.04.2023 pertained to the learned Commercial court dismissing the application of the petitioners seeking direction to the respondent to hand over keys of the suit property.

7. Thereafter, on 02.06.2023 the petitioners filed an application under Order XI Rule 1(5) of the CPC as amended by the Commercial Courts Act, 2015 for leave to file certain additional documents. In the application, the petitioners contended that prior to the filing of the suit, they had consulted various advocates before engaging the present advocate and that they had handed one set of documents to each such advocate during such consultations.

8. However, inadvertently, the petitioners while handing over such documents to one of the counsel namely Mr. Ashish Mittal, also handed over original copies of certain documents they sought to place on record. Since they did not have the copies of such documents, they could not place the same on record and by way of the application under Order XI Rule 1(5) of the CPC, the petitioners sought to place on record five such additional documents. The respondent filed their reply to the said application and thereafter, the learned Commercial Court vide the impugned order dismissed the said application.

9. The learned counsel for the petitioners submitted that the documents petitioners seeks to place on record were not within their power, control or custody and the same were with their previous advocate who they had consulted in regards to filing of the suit and therefore they could not be



placed on record. Further, in no way, the documents sought to be placed on record create a new case against the respondent.

10. The learned counsel submitted that the said documents are necessary for proper adjudication of the present case and no prejudice would be caused to the respondent if the documents are allowed to form part of the record. Further, the learned Commercial Court erred in dismissing the petitioners' application on the ground that the same is not believable and palpably appears to be concocted, which are flimsy grounds.

11. Learned counsel for the petitioners placed reliance on the judgments in the case of:-

- (i) ***Hassad Food Company Q.S.C. & Anr. vs. Bank of India & Ors***, MANU/DE/3385/2019,
- (ii) ***Bennett Coleman & Co. Ltd. vs. ARG Outlier Media Pvt. Ltd. & Ors.***, 2023/SSC OnLine Del 1457,
- (iii) ***M/s Vikram Roller Flour Mills Ltd. vs. M/s KRBL Ltd.***, MANU/DE/4990/2018,
- (iv) ***Columbia Sportswear Company vs. Harish Footwear & Anr.***, in CS (Comm.) 1611/2016 and
- (v) ***Khurmi Associates (Petitioner) Ltd. vs. Maharishi Dayanand Cooperative Group Housing Society***, MANU/DE/1143/2022.

12. Opposing the submissions of the petitioners, the learned counsel for the respondent submitted that the present application filed by the petitioners is only an attempt to improve their plaint as in their interim application filed under Section 151 of the CPC for handing over the keys for the premises in question, the learned Commercial court limited the scope qua their claim of date of handing over the possession. Therefore, the invocations of provisions



of Order XI Rule 1(5) would change the nature of the plaint and is not maintainable under such provisions. Further, it was submitted that the documents were always in possession of the petitioners, however, they only sought to place them on record now and are seeking to change the nature of the suit.

13. Learned counsel for the respondent placed reliance on the judgments of this Court in the case of:

- (i) **Nitin Gupta vs. Texmaco Infrastructure & Holding Limited** in CS (Comm.) 1215/2016,
- (ii) **Bela Creation Pvt. Ltd. vs. Anuj Textiles** in C.M. APPL.(M) 405/2022 and
- (iii) **TTK Prestige Limited vs. Baghla Sanitaryware Private Limited & Ors.** in CS (Comm.) 281/2021.

14. Arguments advanced on behalf of the parties have been heard at length and the record has been meticulously perused.

15. The provision of Order XI Rule 1(5) of the CPC applicable to commercial suits provides as under:

“Disclosure and discovery of documents - (5) 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.”

16. Relevantly, the issue of compliance with provision of Order XI Rule 1(5) CPC and explanation on “reasonable cause” has been discussed in the case of **Sudhir Kumar @ S. Baliyan v. Vinay Kumar G.B: 2021 SCC**



OnLine SC 734, wherein the Hon'ble Supreme Court in paragraphs 30 & 31 held as under:

“30. Order XI 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 XI Rule 1(4) read with Order XI 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.

31. 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 XI 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 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 XI Rule 1(4) and Order XI 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.”

17. This Court in the case of ***Bela Creation Private Limited v. Anuj Textiles, 2022 SCC OnLine Del 1366***, held as under:

“24..... “Reasonable cause”, within the meaning of Order XI Rule 1(10) of the CPC, as amended by the Commercial Courts Act, cannot extend to negligence in filing of documents before the Court. “Reasonable cause”, necessarily, must refer to a cause which was outside the control of the petitioner, and which prevented the petitioner from filing the concerned documents along with the written statement.

(emphasis supplied)”



18. The petitioners have pleaded to take on record the following documents:

- a. *“Defendants’ Letter bearing No. 24(1)/NMDC/PG/2021/PMOPG/D/ 2021/0084151 dated 19.04.2021, addressed to Plaintiff No. 2 Shri Rishab Agarwal, in original.*
- b. *Office copy of Plaintiff’s Letter dated 20.09.2021 to Defendant alongwith original postal receipts.*
- c. *Printout of Email dated 11.10.2021 through which scanned copy of aforesaid letter dated 20.09.2021 was again sent to defendant.*
- d. *Office copy of Plaintiffs’ Letter dated 11.12.2021 to Defendant alongwith original postal receipts.*
- e. *Printout of Email dated 03.05.2022 sent to defendant having the same contents as that of Plaintiffs’ letter dated 03.05.2022 (already part of record at page No. 102-103 of plaint)”*

19. The submissions on behalf of the petitioners is sought to be founded on the premise that prior to filing of the suit, the petitioners had consulted several advocates and handed over one set of documents to each of such advocates. However, the petitioners ultimately decided to get the suit filed through the present advocate. It was on 25.05.2023, the previous advocate i.e. Shri Ashish Mittal, whom the petitioners had earlier consulted, returned the complete file along with set of documents which were handed over to him in the month of May, 2022 for the purposes of consultation prior to filing of the suit. It is further the plea of the petitioners that inadvertently the original/office copies of the aforesaid documents got tagged with the file handed over to Mr. Ashish Mittal, advocate without retaining any



photocopy thereof. Therefore, at the time of filing of the suit, the aforesaid documents could not be filed.

20. Needless to say that in commercial suits, timelines as provided under the Act are to be strictly followed else the Commercial Courts Act will also suffer the same fate as being that of ordinary suits of being dragged, in case undue leniency is shown in extending the time limits.

21. It is relevant to mention that the Hon'ble Supreme Court in ***Ambalal Sarabhai Enterprises Ltd. vs. K.S Infraspace LLP: (2020) 15 SCC 585***, held as under:

“36. A perusal of the Statement of Objects and Reasons of the Commercial Courts Act, 2015 and the various amendments to the Civil Procedure Code and insertion of new rules to the Code applicable to suits of commercial disputes show that it has been enacted for the purpose of providing an early disposal of high value commercial disputes. A purposive interpretation of the Statement of Objects and Reasons and various amendments to the Civil Procedure Code leaves no room for doubt that the provisions of the Act require to be strictly construed. If the provisions are given a liberal interpretation, the object behind constitution of Commercial Division of Courts viz. putting the matter on fast track and speedy resolution of commercial disputes, will be defeated. If we take a closer look at the Statement of Objects and Reasons, words such as “early” and “speedy” have been incorporated and reiterated. The object shall be fulfilled only if the provisions of the Act are interpreted in a narrow sense and not hampered by the usual procedural delays plaguing our traditional legal system.

(emphasis supplied)”

22. The record reveals that the petitioners had filed the commercial suit against the respondents *inter alia* praying for (a) plaintiff for decree of possession; (b) money decree for Rs.1,34,10,100/- towards occupation charges for the period from 01.04.2020 till 31.07.2022 and (c) mesne profits @ Rs.310/- per square feet per month from the date of institution of the suit till handing over of possession of the suit property by the respondents to the



petitioners on 01.08.2022. The respondents contested the suit and filed the written statement on 19.12.2022 and the present application under Order XI Rule 1(5) of CPC was moved by the petitioners on 02.06.2023.

23. The non-filing of the additional documents at the time of institution of the suit, the petitioners seek to justify it on the ground that the said additional documents were on the record of the file of the previous advocate whose legal opinion was sought with respect to filing of the case. It is beyond imagination that the subsequent advocate who had filed the suit did not consider it sufficient to ask for the relevant documents to be filed along with the plaint. Moreso, it is the case of the petitioners that they had consulted a number of advocates before filing this suit and had provided them with one set of documents, therefore, the documents to be filed with the plaint were well within the knowledge of the petitioners and by no means could have been overlooked to be filed with the suit.

24. Hence, the ground as pleaded by the petitioners for not filing the additional documents at the relevant time cannot be treated as sufficient to justify non-filing of the additional documents.

25. There is no denial of the fact that the suit is accompanied by a statement of truth in which it has been specifically stated by the petitioners as under:

"5. I say that all documents in my power, possession, control or custody pertaining to the facts and circumstances of the proceedings initiated by me have been disclosed and copies thereof have been annexed with the plaint and that I do not have any other documents in my power, possession, control or custody."

26. In view of above, the petitioners have failed to assign any reasonable cause which necessarily must refer to a case which was beyond the control



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of the petitioners which prevented the petitioners from filing the additional documents along with the main suit.

27. Having considered the above, the findings and the decision of the learned Trial Court vide impugned order dated 28.08.2023 for not allowing to place the additional documents by the petitioners on record cannot be faulted with. The judgments relied upon by the parties are decided on their own facts distinguishable from the facts of the present case.

28. Consequently, no interference is required by this Court to alter or deny the findings and the petition along with pending application is, accordingly, dismissed.

SHALINDER KAUR, J.

JUNE 27, 2024
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