



2024:DHC:4794



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

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Judgment reserved on: 20.03.2024

Judgment pronounced on: 28.06.2024

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CM(M) 1359/2022

PRIMORDIAL SYSTEMS PVT. LTD

..... Petitioner

Through: Mr. Prashant Mehta and Ms. Ishita Choudhary, Advs.

versus

RAMAN KUMAR CHUG & ANR.

..... Respondents

Through: Mr. Rajiv Kapoor and Mr. Srikant Sharma, Advs.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The petitioner is aggrieved by the order dated 25.02.2021 passed by the learned Additional District Judge-02, Central District, Tis Hazari Courts, New Delhi (in short "Trial Court") in CS DJ no. 12511/16, titled as "*Primordial Systems Pvt. Ltd vs. Raman Kumar Chug & Ors.*" whereby the learned Trial Court partially allowed the application moved by the petitioner herein under Order VII Rule 14 read with Section 151 of Civil Procedure Code, 1908 (in short "CPC") for placing additional documents on record.

2. The factual background leading to institution of the present petition reveals that in the year 2009-10, the petitioner company expanded its business by establishing an education division named 'India Institute of Learning and Advance Development'. On the other hand, respondent no.1 is the sole proprietor of a leading advertising agency known as Hype N Hike Advertising Inc., the respondent no.2 company.



3. In 2010, respondent no.1 approached the petitioner with an offer to provide end-to-end advertising, marketing collateral design and layout services along with a 10-week credit cycle from the date of publication of an advertisement till the due date of payment. Subsequently, the petitioner agreed to appoint respondent no.2 as the agency on record for its media publication with effect from 05.10.2010.
4. On 29.07.2011, the petitioner instituted a suit before this Court bearing CS (OS) no. 1814/2011 titled as "*Primordial Systems Pvt. Ltd. vs. Raman K Chugh & Anr.*" seeking recovery of damages amounting to Rs.70,06,421/- (approx.) against the respondents. The respondents filed their written statement claiming that the petitioner company is in financial mess and does not have funds to pay its liabilities.
5. Subsequently, a notification dated 24.11.2015, relating to the pecuniary jurisdiction of Delhi High Court had come into force. In view of the said notification, the suit bearing CS (OS) no.1814/2021 pending before this Court was transferred to Tis Hazari Courts, Central District, Delhi. The suit was then registered as CS DJ no. 612511/2016.
6. Thereafter, the learned Trial Court vide order dated 17.05.2018 closed the evidence of the petitioner, citing lack of diligent prosecution of the matter. On 22.02.2019, the petitioner filed an application under Order VII Rule 14 read with Section 151 CPC to place on record nine additional documents. It is the case of the petitioner that the aforementioned documents are highly relevant for adjudication of the present matter as the said documents demonstrate the breaches committed by the respondents of the agreement between the parties and are necessary for quantifying,



substantiating and proving the claims while refuting the counter claims of the respondents.

7. Vide order dated 25.02.2021, the learned Trial Court partially allowed the said application and permitted the petitioner to file specific documents mentioned in paragraph 20, clauses (ii), (viii) and (ix) of the application. Additionally, the learned Trial Court held that there was no explanation provided as to why documents pertaining to the year 2011-12 were prepared in 2019. Further, the learned Trial Court was of the view that the reasons cited are irrelevant to the merits of the case as change of counsels is not a valid justification for delaying the preparation of the documents.

8. The petitioner is aggrieved by the order dated 25.02.2021 and has assailed the same before this Court by filing the present petition under Article 227 of the Constitution of India.

SUBMISSIONS OF THE PARTIES

9. Mr. Prashant Mehta, learned counsel for the petitioner submitted that the learned Trial Court erred by partially allowing the application under Order VII Rule 14 CPC and disallowing some documents without providing any justification for the same. It is also submitted that the said documents are highly material and crucial as they go to the root of the matter as evident from a bare reading of the pleadings.

10. Learned counsel submitted that the learned Trial Court failed to consider that no prejudice has been caused to the respondents on account of the alleged delay. The only prejudice being caused on account of delay is to the petitioner. In fact, the respondents never raised or argued the ground of



delay and any purported prejudice during the course of arguments before the learned Trial Court.

11. Learned counsel further submitted that the learned Trial Court failed to consider that the application was filed well before the commencement of the petitioner's evidence. Hence, no prejudice is likely to be caused to the respondents if the documents were permitted to be brought on record, as the respondents could have brought rebuttal evidence and could have cross examined the petitioner in respect of the said documents.

12. Learned counsel vehemently submitted that the learned Trial Court failed to consider that it is a well-established legal principle that while disallowing any request for additional documents, adequate reasons must be provided in the order. While rejecting the prayer of the petitioner by the learned Trial Court, the sole reason for not taking the said documents on record was that the reasons stated in paragraphs 22 and 23 are extraneous to the merits of the case.

13. Learned counsel also submitted that the said documents could not be filed earlier because the case kept transferring from one counsel to another. Further, the continuous ill health and untimely demise of the previous counsel, Late Shri N.N. Agarwal in January 2016, contributed to the delay. A bundle of documents entrusted to the previous counsel's law firm, Neo Juris for filing before the Court were neither filed nor transferred to the firm of the present counsel.

14. Learned counsel for the petitioner submitted that after examining the entire case, the new counsel realized that the relevant documents necessary to prove the case of the petitioner had not been filed and demanded the same from the petitioner. The number and nature of these documents are



such that the petitioner had to spend a lot of time arranging and handing them over to the present counsel. Furthermore, the said documents are of such a nature that they were maintained by different departments of the petitioner company, including information solely managed by the Chartered Accountants in their office. This is why it took some time for the petitioner to arrange the documents.

15. To strengthen the arguments, learned counsel for the petitioner has relied upon the following judgments:

- i. *M/s Asman Investment Ltd. vs. K.L. Suneja and another*, AIR 1998 Delhi 204.
- ii. *Bada Bodaiah and another vs. Bada Lingaswamy and other*, 2003 AIHC 1285.
- iii. *Raj Khanna vs. Mrs. Mira Chawla & Ors.*, 150(2008) Delhi Law Times 500.
- iv. *K.K. Velusamy vs. N. Palanisamy*, (2011) 11 SCC 275.
- v. *Nanjunda Setty vs. M/s Tallam Subbaraya Setty & Sons*, ILR 2004 KAR 924.
- vi. *Kapil Kumar Sharma vs. Lalit Kumar Sharma*, (2013) 14 SCC 612.
- vii. *Kirpal Chand & Ors. vs. Skipper Construction Co. Pvt. Ltd. and Ors.*, 98 (2002) DLT 201.
- viii. *United India Periodicals vs. Central Bank of India*, 70 (1997) DLT 786.

16. On the other hand, Mr. Rajiv Kapoor, learned counsel for the respondents refuted the submissions of the petitioner by stating that as mentioned in the present petition, if the petitioner was truly concerned about the irreparable loss and injury, the petitioner would not have waited



for more than twenty-one months to challenge the impugned order and to file the present petition on 02.12.2022. It was only after the order dated 20.10.2022 was passed by learned Trial Court, the petitioner has moved the present petition to impugn the order dated 25.02.2021.

17. Learned counsel submitted that the present petition filed by the petitioner is not maintainable, as it is hopelessly time barred on one hand and not maintainable under Article 227 of the Constitution of India since the remedy of revision or appeal was available to the petitioner.

18. It was further submitted that the petitioner had already tendered the document Exhibit PW1/9, which was earlier disallowed by this Court vide order dated 25.02.2021. Therefore, the petitioner is guilty of defrauding the Court by tendering the said document again. The learned counsel supported the impugned order and sought for dismissal of the petition.

19. The arguments were strongly rebutted by the petitioner by submitting that respondents have portrayed a false and concocted story with malafide intent to cover up its own delays and breaches. The averments made by the respondents are false and misleading being against the facts on record.

20. I have heard the learned counsels appearing on behalf of the parties at length and have considered the record as well as the impugned order.

REASONS & CONCLUSION

21. In the present case, the petitioner had sought to place on record nine additional documents vide application under Order VII Rule 14 CPC moved on 22.02.2019. The application was partially allowed by the learned Trial Court on 25.02.2021 permitting the petitioner to place on record only three documents out of the nine documents. The six



documents were not permitted to be placed on record as the petitioner could not satisfy the learned Trial Court that, since most of the documents pertained to financial year 2011-12 but were got prepared in the year 2019. Learned Trial Court also found that the reasons mentioned by the petitioner for having prepared the documents in the year 2019 were totally extraneous to the merits of the case. Furthermore, the learned Trial Court observed that the explanation given by the petitioner for not producing the documents at the relevant stage i.e. change of counsels was not a cogent reason for delay in getting the documents prepared. Therefore, six additional documents were not permitted to be placed on record.

22. At the outset, it needs to be highlighted that the petitioner has challenged the impugned order dated 25.02.2021 before this Court under Article 227 of the Constitution of India on 02.12.2022. It is important to note that while no specific period is prescribed to file petition under Article 227 of the Constitution of India, the Courts, however, expect the petition to be filed within a reasonable time. Therefore, it is important for the petitioner to act diligently and provide a sufficient explanation for any delay in filing the petition under Article 227 of the Constitution of India. There is no valid explanation by the petitioner as to why he waited for 21 months to assail the order before this Court specially when it is noticed that the petitioner accepted the impugned order and filed its affidavit by way of evidence on or about 20.09.2021.

23. Though to explain the delay in filing the present petition, the petitioner has submitted that his erstwhile counsel, who had filed the application under Order VII Rule 14 CPC on 22.02.2019, did not advise the petitioner of the possibility of an appeal against the impugned order. That



post January, 2022, when the petitioner was to file an appeal against the impugned order, the petitioner company's managing director Mr. K. Parijaat, who is also the sole senior functionary of the petitioner company looking after legal and financial matters contacted Covid-19 thrice between the period January, 2022 and July, 2022, which complicated his pre-medical condition of chronic obstructive pulmonary disease which he has been a patient of since 2018, leaving him in no mental or physical condition to pursue the case or to file or decide course of action until October, 2022. The petitioner has filed three Covid-19 reports dated 24.01.2022, 11.05.2022 and 27.07.2022, when Mr. K. Parijaat was detected for being Covid positive.

24. It is noticed that, the petitioner during the period between 25.02.2021 to July 2022 had taken many steps in the matter i.e., filed its affidavit by way of evidence, had re-engaged his previous counsel and filed his fresh vakalatnama on 12.05.2022 to represent the petitioner before learned Trial Court. All this belied the argument of the petitioner that due to ill health of the managing director, he was mentally & physically perturbed to pursue the case or decide any course of action until October, 2022. Hence, the reasons assigned by the petitioner, which resulted in delay in filing the present petition does not inspire confidence that the delay in filing the present petition was on account of medical reason of Mr. K. Parijaat. These are merely bald submissions made on behalf of the petitioner coupled with the fact that the impugned order had been accepted by the petitioner by not timely challenging the said order.

25. Further, the petitioner being a company, is required to have minimum of two directors, nothing prevented the petitioner from taking



further legal advice when Mr. K. Parijaat came to know that certain documents, which were important to establish petitioner's case were not allowed to be taken on record vide the impugned order.

26. Equally important is the conduct of the petitioner as after the passing of the impugned order on 25.02.2021, the petitioner filed evidence affidavit of Mr. K. Parijaat on 20.09.2021, which clearly shows that the petitioner was not aggrieved with the impugned order and therefore, proceeded to the next stage of the case for getting its evidence recorded on 20.09.2021. It is thus, observed that the petitioner has not been vigilant either in filing the documents before the learned Trial Court nor in challenging the impugned order before this Court.

27. Notwithstanding the foregoing, the provision of Order VII Rule 14 CPC envisages as under:-

“ORDER VII

14. Production of document on which plaintiff sues or relies.—

(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiffs witnesses, or handed over to a witness merely to refresh his memory.”

28. A plain reading of Order VII Rule 14(3) CPC makes it clear that a document, which ought to be produced in the Court by the plaintiff when



the plaint is presented, if not produced shall not without the leave of the Court be received in evidence on his behalf at the hearing of the suit. Consequently, before the leave of the Court can be granted for receiving documents in evidence at a belated stage, the parties seeking to produce the documents must satisfy the Court that the said documents were earlier not within the knowledge of the parties or could not be produced at the appropriate time despite of due diligence.

29. The Hon'ble High Court of Andhra Pradesh vide its judgment titled as ***Bada Bodaiah & Anr. v. Bada Lingaswamy and other*** (Supra) observed as follows:

“12. ...Further, Sub –rule (3) of Rule 14 of Order VII empowers the Court to give permission or leave to the plaintiff to produce documents at a subsequent stage of hearing of the suit. Order XIII Rule 1 and Order VII Rule 14(3) have to be read together harmoniously. Reading together would lead that if the plaintiff applies for permission or leave to produce documents to be received in evidence at the hearing of the suit which documents were not produced on or before settlement of the issues or at the time of production of the plaint, the Court has to exercise sound discretion having regard to the facts and circumstances of each case.”

30. Pertinently, the learned Trial Court has disallowed six documents to be placed on record as the petitioner could not furnish any explanation for Chartered Accountant's certificate prepared in the year 2019 pertaining to the financial year 2011-12. Admittedly, the petitioner has quantified the losses which it is stated to have suffered and the Chartered Accountant's Certificate is also stated to be prepared for the Financial Year 2011-12, yet there is no cogent explanation as to why this Chartered Accountant's Certificate could not be filed along with the plaint or at least prior to framing of issues.



31. The explanation which is sought to be given for the first time before this Court that in the process of transfer of case files to the new counsel after the demise of previous counsel in January, 2017, certain important documents were misplaced, does not instill any confidence for the reason that still there is no explanation as to what prevented the petitioner company to prepare the Chartered Accountant Certificate at the time of filing of the suit or at the earliest.

32. Needless to say, the petitioner has also not explained the exact nature of documents that went missing as in the application moved under Order VII Rule 14 CPC, the petitioner has not stated that the nine documents that he proposed to place on record were misplaced in process of transfer of case files from the office of his erstwhile counsel. Most importantly, the petitioner still chose to file evidence affidavit on 20.09.2021 without challenging the impugned order, when the learned Trial Court had disallowed its application.

33. Another aspect of the matter subsequent to the filing of the present petition is the contention of the learned counsel for the respondents, the petitioner tried to slip in additional documents through the evidence by way of affidavit, which were never placed before the learned Trial Court either with the plaint, replication or with application under Order VII Rule 14 CPC. The learned counsel further contended that it was for the first time, the petitioner filed fresh documents with evidence affidavit without leave of the Court and also exhibited the said documents. Also, that one document, which was rejected by the learned Trial Court to be placed on record vide impugned order was also annexed with the aforesaid evidence affidavit.



34. The respondents took a strong objection to the filing as well as exhibiting of the said documents before the learned Trial Court by moving two applications seeking expunging and de-exhibiting the documents from the record filed by the petitioner along with evidence by way of affidavit and also initiating the proceedings under Contempt of Courts Act, 1971 against the petitioner and another application for rejection of the affidavit, filed as evidence by way of affidavit, same being contrary to the law of affidavits.

35. Needless to say the aforesaid said two applications dated 10.02.2022 are pending before the learned Trial Court filed by the petitioner along with the evidence affidavit, which will be decided by the learned Trial Court on its merits. The other judgments relied upon by the petitioner are decided on their own facts distinguishable from the facts of the present case.

36. Having regard to the conspectus of the entire matter and the conduct of the petitioner, it is noticed that petitioner has failed to give any cogent explanation as to neither the documents were in possession and power of the petitioner so as to be filed along with the plaint, nor the explanation sought to be rendered by placing the entire blame on the previous counsels is found to be satisfactory so as to permit the petitioner to place the additional documents on record.

37. This Court finds no ground to interfere with the impugned order. Consequently, the present petition stands dismissed.

SHALINDER KAUR, J.

JUNE 28, 2024

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