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

% ***Date of decision: 03rd September, 2024***

\+ CM(M) 3315/2024 & CM APPL. 51050-51051/2024

VINESH SHARMA .....Petitioner

Through: Mr. Bhimsain Jain, Advocate.

versus

M/S VIJAY COTSWIN PVT LTD. .....Respondent

Through: None.

\+ CM(M) 3317/2024 & CM APPL. 51082-51083/2024

VINESH SHARMA .....Petitioner

Through: Mr. Bhimsain Jain, Advocate.

versus

NIRMALA JAIN .....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT *(oral)*

1. The Petitioner is defending two recovery suits filed by the respondent herein.

2. Since the nature of the suits and the parties in both the above suits are common and since the identical issues have been raised in both the present petitions, these are being disposed of by this common judgment.

3. The respondents filed recovery suits which were registered as C.S.(Comm) No.114/2023 and CS (Comm) No.115/2023. The

defendant (petitioner herein) filed written statement within the statutory period and after completion of proceedings, the issues were framed on 08.05.2024. Same day, the learned Trial Court also appointed a Local Commissioner for the purposes of recording of evidence.

4. Fact remains that despite such appointment, no evidence has yet been recorded by the learned Local Commissioner.

5. In the interregnum, the plaintiff filed an application under Order XI of Civil Procedure Code, as applicable to Commercial Courts, praying therein that he may be permitted to place on record GST-R1, affidavits/certificates as per Section 63 of Bhartiya Shakshya Adhiniyam, 2023 and also copy of notice under Order XII Rule 8 CPC. It was contended that these documents were having vital bearing over the case of the plaintiff.

6. Such applications were opposed by the defendant (petitioner herein).

7. However, vide order dated 17.08.2024, such applications moved in both the cases have been allowed and these orders are under challenge.

8. According to learned counsel for the petitioner, since the "Statement of Truth" had already been filed by the plaintiff along with his plaint wherein he categorically claimed that all the documents in his power, possession, control and custody, pertaining to the case in

hand had been disclosed and the copies thereof had also been annexed with the plaint, in the face of such Statement of Truth filed before the learned Trial Court, there was no reason for the learned Trial Court to have taken on record the documents as the plaintiff had failed to establish any reasonable cause for non-disclosure of the same at the time of the filing of the plaint.

9. Strong reliance has been placed upon *CASA 2 Stays Pvt. Ltd. vs. VLCC Personal Care Ltd.*: 2024 SCC Online Del 4587 and *TTK Prestige Limited vs. Baghla Sanitaryware Private Limited & Ors.:* 2024 SCC Onlilne Del 882.

10. The position is no longer *res integra* and though any plaintiff can always maintain an application under Order XI Rule 1(5) CPC but the Court is required to grant permission only upon the plaintiff establishing a reasonable cause for non-disclosure of these documents along with the plaint.

11. This Court is also conscious of the fact that no witness has, so far, graced the witness box and the learned Local Commissioner has yet to record any evidence.

12. Coming to the nature of the documents, as already noticed above, the plaintiff merely had sought leave of the learned Trial Court to place on record GST-R1, affidavits/certificates as per Section 63 of Bhartiya Shakshya Adhiniyam and also notice under Order XII Rule 8 CPC.

13. It is very clear that after filing of the suit, the plaintiff had issued one notice under Order XII Rule 8 CPC and by virtue of the aforesaid notice, the plaintiff had asked its adversary to produce the above said GST Forms only.

14. Learned counsel for the petitioner/defendant has, in all fairness, admitted that though such notice was received but it was not responded. He, however, states that in case of no response being given by any such party, the Court can, at best, draw an adverse inference but cannot permit any such plaintiff to take recourse to Order XI Rule 1(5) CPC and to permit such plaintiff to place on record the documents, without establishing any justifiable cause.

15. However, after serving notice under Order XII Rule 8 CPC, any such party is not only permitted to draw adverse inference but can also seek permission to lead secondary evidence.

16. The plaintiff, after filing of the suit, served the defendant with a notice under Order XII Rule 8 CPC and asked him to produce the GST Forms in question but since there was no response from the side of the defendant, it moved the abovesaid application under Order XI CPC seeking leave of the Court. It has been mentioned in the application moved by it under Order XI Rule 1 CPC that the relevant GST record had been downloaded from GST Portal and since electronic device had been used for the purposes of downloading the abovesaid details, it also sought permission to place on record an affidavit/certificate to abovesaid effect. It sought leave to place on

record copy of notice under Order XII Rule 8 CPC, which was not in existence when the plaint was filed. Evidently, there is nothing to show that these documents were in possession of the plaintiff at the relevant time.

17. Moreover, keeping in mind the overall facts of the present case, it is also quite palpable that the plaintiff has been able to establish a reasonable cause as well.

18. In case of *CASA 2 Stays Pvt. Ltd.* (supra), the nature of the documents was different as in that case the plaintiff wanted to place on record summary statement of the total invoices raised, payment received, credit note and outstanding amount. Similarly, in *TTK Prestige Limited* (supra), which was an infringement suit, the plaintiff wanted to place on record several documents pertaining to promotional material, CA Certificate showing sales and promotional figures for the relevant years and unaudited statement of sale and promotional expenses and keeping in mind the nature of those documents, the request of the plaintiff was declined. Therefore, the petitioner cannot be permitted to dig out any advantage from said precedents as the facts herein are distinguishable.

19. This Court is very much conscious of the fact that the present petitions have been filed under Article 227 of the Constitution of India whereby the Court is required to exercise its supervisory powers. The duty of the supervisory Court is to interdict if it finds that the findings are perverse i.e. (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. Reference be made to *Puri Investments Versus Young Friends and Co. and Others: 2022 SCC OnLine SC 283.*

20. Viewed thus, there is no merit and substance in the present petitions.

21. The petitions are, accordingly, dismissed in *limine.*

(MANOJ JAIN)
JUDGE

SEPTEMBER 03, 2024
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