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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decision delivered on: 12.09.2024

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FAO (COMM) 173/2024, CM Nos.51454/2024 & 51457/2024**M/S KENT RO SYSTEMS LTD**

.....Appellant

Through: Ms Rajeshwari Hariharan and Mr
Kumar Chitranshu, Advs.

versus

BRAND PROTECTORS INDIA PVT LTD

.....Respondent

Through: Mr Shubham S. Dayma, Adv.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):**

1. Mr Shubham S. Dayma, Advocate, enters appearance on behalf of the respondent.
2. On the previous date i.e., 04.09.2024, we had heard Ms Rajeshwari Hariharan, learned counsel, who appears on behalf of the appellant.
2. 1 For convenience, the relevant part of the order passed on 04.09.2024 is set forth hereafter:

“6. This appeal is directed against the judgment and order dated 30.05.2024 passed by Mr Ajay Kumar Jain, learned District Judge (Commercial Court-03), South-East, Saket Courts, Delhi.

7. Via the impugned judgment and order, the trial court has rejected the application preferred by the appellant/defendant under Order VIII Rule 1A(4) read with Section 151 of the Code of Civil Procedure, 1908 [in short, “CPC”] seeking permission to confront PW-1 [Mr Dharendra Singh] with documents during cross-examination.

8. Counsel for the appellant/defendant says that the rationale given for dismissing the application by the trial court is that the nature and details of



the documents were not disclosed in the application.

8.1 *It is the submission of the counsel for the appellant/defendant that the reason that assertions concerning the details of the documents were not outlined in the application is that it did not want to lose the element of surprise when confronting PW-1 with the documents.*

8.2 *Furthermore, counsel for the appellant/defendant says that in any event, the documents with which the appellant/defendant, wishes to confront the respondent/plaintiff, are documents that involve the respondent/plaintiff.*

9. *Prima facie, according to us, as long as the documents are relevant to the dispute, the appellant/defendant ought to have the right to confront the respondent/plaintiff.*

10. *Accordingly, issue notice to the respondent/plaintiff via all modes including email.*

10.1 *In addition, liberty is given to the appellant/defendant to effect service on the counsel-on-record for the respondent/plaintiff.*

11. *List the appeal on 12.09.2024.*

12. *We are told that the Local Commissioner who is to record the evidence has listed the matter before him on 05.09.2024.*

13. *The Local Commissioner will stand over the matter to a day beyond the date fixed in the appeal.”*

3. A perusal of the impugned order shows that the learned trial court, while disposing of the application preferred by the appellant under Order VIII Rule 1A(4) read with Section 151 of the Code of Civil Procedure, 1908 [in short, “CPC”], made the following observations:

“Presently, the case at the stage of cross-examination of PW-1 before the Ld. Local Commissioner. Defendant is trying to confront PW-1 with certain documents which are not part of pleadings. The defendants during cross-examination on the pretext of the element of surprise, wishes to confront the document but neither disclosed the nature of the document nor part of pleadings, and also there is nothing mentioned about the nature of the documents in the present application. The application is vague on all particulars regarding documents which are to be confronted to witness during cross-examination. The present application is therefore dismissed and disposed of accordingly.”

4. As indicated on the previous date i.e., 04.09.2024, we had expressed a *prima facie* view, which was that the appellant should have the right to confront the witness tendered by the respondent/plaintiff with documents as



long as they are relevant to the matter in issue.

4.1 Having heard the counsel for the parties, we reiterate that view.

5. Furthermore, if an objection is raised *qua* relevance of the documents, that objection could be recorded, which would be dealt with by the learned trial court at the stage when the suit is adjudicated.

5.1 Insofar as admissibility of the documents is concerned, the regime, as stated above, would follow.

6. We are told that the matter is fixed before the Local Commissioner (LC) for recordal of evidence on 13.09.2024. The LC will follow the directions set forth above.

7. The appeal is disposed of in the aforesaid terms. Consequently, the pending applications shall stand closed.

8. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

AMIT BANSAL, J

SEPTEMBER 12, 2024/aj