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

% ***Date of decision: 24th October, 2024***

+ **CM(M) 3701/2024 & CM APPL. 62692-62693/2024**

SHIV ENTERPRISES (PROPRIETOR SANJEEV GOSWAMI)

.....Petitioner

Through: Mr. Sandeep Thukral, Advocate
versus

AMIT SHARMA (PROPRIETOR ARIA INTERNATIONAL)

.....Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 62692/2024 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 3701/2024 & CM APPL. 62693/2024

1. Petitioner is defending a commercial suit and is aggrieved by order dated 23.09.2024 passed by the learned Trial Court whereby application moved by the plaintiff (respondent herein) under Order XI CPC has been allowed.
2. Learned counsel for petitioner (defendant before the learned Trial Court) contends that the application was filed after around six months of the institution of the suit and no plausible reason has been given and, therefore, learned Trial Court should not have allowed the application merely for the asking.
3. As per plaintiff, he had received one e-mail from defendant on 25.02.2023 but since he used to put old e-mails in different folder in Gmail



Account, he could not place the contents of the aforesaid e-mail when he had filed the suit. He, therefore, prayed that the aforesaid e-mail, which had been sent by none other than his adversary, be permitted to be placed on record.

4. Undoubtedly, as contended by plaintiff, since such e-mail had been received by him and had been put by him in a different folder, for all practical purposes, the aforesaid digital document was under his control and possession but at the same time, it cannot be overlooked that he has very specifically claimed that he had put the aforesaid e-mail in a different folder and could not, therefore, place it on record with the documents which he had filed along with plaint.

5. Admittedly, issues have not yet been framed and though, plaintiff should have extra vigilant but keeping in mind the reason assigned by him and the nature of the document, learned Trial Court seems justified in allowing the aforesaid application. As noted already, he merely wanted to place on record e-mail which had been sent by the defendant to him. Such e-mail can, even otherwise, be confronted during the trial in cross-examination and, therefore, no real prejudice is going to be caused to the defendant.

6. Reference be made to *Md. Islamuddin Vs. S.S. Kapoor: 2022 SCC OnLine Del 3608* wherein this Court observed that petitioner is simply required to show under Order XI Rule 1(5) of the CPC that a sufficient cause existed on account of which he could not file such additional documents with the plaint.

7. Para-8 of aforesaid judgment reads as under:-

"8. In Sugandhi v. P. Rajkumar, the Supreme Court has held that the court is required to adopt a lenient view while considering an application for taking additional documents on record. The following passage from the said decision may be usefully reproduced:



“6. Rule 1-A of Order 8 CPC provides the procedure for production of documents by the defendant which is as under:

“1-A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.—(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counterclaim, he shall enter such document in a list, and shall produce it in court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

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

(3) A document which ought to be produced in court by the defendant under this Rule, but, is not so produced 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 documents—

(a) produced for the cross-examination of the plaintiff's witnesses, or

(b) handed over to a witness merely to refresh his memory.”

7. Sub-rule (1) mandates the defendant to produce the documents in his possession before the court and file the same along with his written statement. He must list out the documents which are in his possession or power as well as those which are not. In case the defendant does not file any document or copy thereof along with his written statement, such a document shall not be allowed to be received in evidence on behalf of the defendant at the hearing of the suit. However, this will not apply to a document produced for cross-examination of the plaintiff's witnesses or handed over to a witness merely to refresh his memory. Sub-rule (3) states that a document which is not produced at the time of filing of the written statement, shall not be received in evidence except with the leave of the court. Rule 1(1) of Order 13 CPC again makes it mandatory for the parties to produce their original documents before settlement of issues.



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 straitjacket 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)."

8. Cause cited by the plaintiff in not submitting the aforesaid e-mail is quite categorical and specific cannot be labelled as superfluous either. According to him, such old e-mail had been put by him in a different folder and, therefore, he could not submit the same along with other documents when he had instituted the suit. Moreover, the special peculiarity is that such email was sent by defendant only and, therefore also, there is no question of any prejudice being caused to him.

9. In view of foregoing discussion, present petition is dismissed.

(MANOJ JAIN)
JUDGE

OCTOBER 24, 2024/dr