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

+ CM(M) 1476/2018, CM APPL. 50713/2018--stay

M/S KM EUROPA METAL AG

..... Petitioner

Through: Ms. Smiti Verma and Mr. Pranay  
Chitale, Advocates.

versus

M/S NEW ERA INDUSTRIES

..... Respondent

Through: Ms. Kirti Mewar, Adv.

**CORAM:**

**HON'BLE MS. JUSTICE SHALINDER KAUR**

**ORDER**

**19.03.2024**

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1. The present petition has been filed under Article 227 of the Constitution of India impugning the order dated 22.10.2018 passed by the Learned Additional District Judge -02, South District, Saket Courts, New Delhi (hereinafter as "Trial Court") in Civil Suit bearing no. 6855/2016 titled as "*M/s New Era Industries vs M/s KM Europa Metal AG*" whereby the learned trial court allowed the application filed by the respondent under Order VII Rule 14(3) of Code of Civil Procedure, 1908 (hereinafter as "CPC") read with Section 151 CPC for leading additional evidence regarding certificate under Section 65 of the Indian Evidence Act. The petitioner herein is the defendant in the captioned civil suit before the learned trial court.

2. The petitioner is a company based in Germany and is a manufacturer and supplier of Patina Copper Sheets used for cladding of sloping roofs,



pergolas etc under the brand name of “TECU”.

3. The respondent is a registered partnership firm with its registered office at 51, First Floor, Adhchini, New Qutab Hotel, New Delhi, 110017 and is stated to be engaged in importing and marketing a few reputed international branded products related to the field of Architecture and Interior Design. The petitioner appointed the respondent company to be its representative in India for the purpose of marketing and promotion of goods manufactured by the petitioner under the brand name “TECU” and it was agreed by the parties to undertake business activities together, specifics of which are not pertinent for adjudication of the present case.

4. The facts necessary for the present matter are such that the respondent in 2009, filed the present civil suit before this court bearing no. CS(OS) 849/2009 seeking recovery of Rs. 36.38 lakhs against the petitioner in 2009, arising out of the business activities undertaken by them. Thereafter, the petitioner filed its written statement in the said suit. Subsequently, issues were framed and the matter was posted for plaintiff’s evidence.

5. Notably, the matter was transferred to the learned district court vide notification no. 77187/DHC/Orgl. dated 24.11.2015 and the parties were directed to appear before the learned trial court for further proceedings.

6. During the course of proceedings before the learned trial court, the respondent filed an application under Order VII Rule 14 seeking to place on record certain additional documents which was allowed by the learned trial court vide order dated 19.04.2016 subject to cost of Rs. 10,000 while noting the lack of diligence on the part on the respondent.

7. Thereafter, the respondent filed another application under Order VII Rule 14(3) CPC for placing on record an email dated 09.08.2005 along with



a certificate under Section 65B of the Indian Evidence Act, furnished by PW-1, Mr. Aman Khanna with a further prayer to recall PW-1 to take on record his additional evidence. The aforesaid application was dismissed by the learned trial court vide order dated 17.08.2017 inter alia, holding that the said email finds no mention in the entire plaint as well as the same could not have been relied on by PW1 when the said email was already in possession and in knowledge of the respondent herein at the relevant time.

8. Subsequently, the aforesaid order was challenged before this court in C.R.P. No. 231 of 2017 titled as “*New Era Industries vs KM Europa Metal AG*”. This court vide order dated 01.05.2018 disposed of the aforesaid petition keeping in view the said email dated 09.08.2005 already stood admitted by the petitioner’s representatives and as such there was no need for strict proof of the document sought to be adduced.

9. Shortly thereafter, the respondent filed yet another application under Order 7 Rule 14(3) CPC seeking to place certificate under Section 65B of the Indian Evidence Act and for the PW1 to lead evidence in this regard. The learned trial court vide impugned order dated 22.10.2018 allowed the application filed by the respondent.

10. Unsettled by the learned trial court allowing the application of the respondent, the petitioner has preferred the present petition.

11. It is specifically submitted on behalf of the petitioner the learned Trial Court fell in grave error while allowing the application moved on behalf of the respondent under Order VII Rule 14 CPC once the issue regarding placing the additional documents on record for once for all had been closed by this Court vide order dated 01.05.2018 in C.R.P. No. 231 of 2017 titled as “*New Era Industries vs KM Europa Metal AG*” wherein it is specifically



recorded in the order of this court that the respondent is not pressing for any further prayers.

12. Learned counsel further submitted that by virtue of the previous application, the respondent had brought on record certain emails, therefore, the respondent should have been careful to place on record the certificate under Section 65 B of the Indian Evidence Act, 1872 also. Having granted the liberty and failed to do so, he cannot by way of a second application re-agitate the same issue which has already attained finality.

13. Undoubtedly, the respondent should have been diligent in placing all the documents on record once leave was granted by the Court to place the additional documents, unfortunately it appears that the respondent failed to place on record the certificate under Section 65B of the Indian Evidence Act.

14. Learned counsel also submitted that the evidence of the respondent has been closed and the petitioner will have no opportunity to rebut the said documents, if allowed to place on the record.

15. While refuting the submissions, learned counsel for the respondent submitted that the respondent has been summoned for a limited purpose of proving certificate under Section 65B of the Indian Evidence Act and the petitioner shall have sufficient opportunity to cross examine the respondent with respect to the said certification under Section 65B, if is allowed to be placed on the record.

16. It is relevant to reproduce the order of the learned Trial Court which reads as under:-

*“In order to avoid another round of litigation before the Hon'ble High Court, the Court believes that the defendant can be suitably compensated with costs for the negligence of the plaintiff. In any case, defendant is yet to*



*file its evidence before the Learned Local Commissioner. Consequently, this application is allowed subject to payment of cost of Rs.25,000/- to be paid to the defendant.”*

17. The learned Trial Court has exercised its discretion and rightly so to avoid further litigation between the parties and allowed the certification under Section 65B to be placed on the record and thereby compensating the petitioner with the cost due to negligence of the respondent.

18. Consequently, there is no illegality or perversity in the order passed by the learned Trial Court. Accordingly, the petition, along with the pending application, stands dismissed.

**SHALINDER KAUR, J.**

**MARCH 19, 2024**

**SU/KM**