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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1119 OF 2024

Ramesh Keshav Kadam

.....Petitioner

Vs.

Star Worldwide Movers Private Ltd.

.....Respondent

Mr. Mangal Bhandari i/b Ms. Pranjali Bhandari for the petitioner
Mr. Dattatray Adarkar for the respondent

CORAM : GAURI GODSE, J.

DATE : 17th JUNE 2025

ORDER:

1. The respondent was served with notice for the final disposal of the petition. Heard learned counsels for the parties for the final disposal of the petition.

2. This petition is filed by the plaintiff to challenge the order dated 13th April 2023 passed by the City Civil Court rejecting the notice of motion seeking leave to produce the documents which were not referred to in the plaint. The plaintiff had filed the list of documents and thereafter filed a notice of motion seeking leave to produce the documents shown in the list annexed to the notice of

motion. The plaintiff contended that the suit was converted to a commercial suit and therefore, the plaintiff was required to seek leave of the Court to produce the documents listed in Annexure-A.

3. By the impugned order, the learned Judge has partly allowed the notice of motion and permitted the plaintiff to produce a statement of account of outstanding bills for the period of May 2011 to September 2011, an email dated 20th January 2012 and a certificate under Section 65B of the Indian Evidence Act. Thus, the plaintiff is allowed to produce the documents at item 2 of the list, and from item 3 of the list, the email dated 20th January 2012 is allowed to be produced. Thus, the remaining items listed in item 3 and the documents listed at item nos. 2, 4 and 5 are disallowed. The prayer to disallow those documents is on the ground that the plaintiff has not averred about these documents and has not disclosed the same in the list filed along with the plaint.

4. Learned counsel for the plaintiff submits that the documents not referred to and not disclosed in the list, along with the plaint, can be produced by seeking leave of the Court as the suit is converted into a commercial suit. He submits that in the supporting

affidavit to the notice of motion, the grounds argued for leave are specifically mentioned. He submits that in the supporting affidavit, the plaintiff has contended that reference to the documents is pleaded; however, the list which was enclosed along with the plaint was initially not covered under the Commercial Courts Act, hence, specific reference was absent from the list of documents or the plaint. He, however, submits that in view of the conversion of the suit into a commercial suit, notice of motion was filed at the relevant time seeking leave to produce the documents.

5. Learned counsel for the defendant supports the impugned order by relying upon sub-rule (5) of Rule 1 of Order XI of the Schedule to the Commercial Courts Act, 2015. He submits that in view of sub-Rule (5), the plaintiff must establish a reasonable cause for non-disclosure of the document along with the plaint. He submits that the suit was converted into a commercial suit on 11th March 2022, however, the plaintiff has filed their present application for leave only after about eight months without explaining the reason for not applying immediately after the suit was converted to a commercial suit.

6. I have perused the papers of the petition. A perusal of the notice of motion and the supporting affidavit indicates that the plaintiff has explained the reasons for filing the application for leave to produce the documents. There is no dispute that the suit was converted into a commercial suit only on 11th March 2022. An application for leave to produce documents was filed on 9th January 2023, along with a supporting affidavit. The compilation of documents is referred to in the affidavit with a reference that out of the documents, five documents were not referred to in the plaint, and those documents are listed in Annexure-A of the affidavit in support. The reason stated in the affidavit is that the suit has been converted into a commercial suit, and therefore, the plaintiffs need to seek leave to accept the documents that were not referred to in the plaint and the list of documents filed along with the plaint.

7. The learned Judge refused to allow the documents on the ground that the documents are not referred to in the list disclosed along with the plaint. The reason for the plaintiff to file an application for leave to produce the documents is on the same ground that the documents were not referred to in the list; however,

there are supporting averments in the plaint. The reason for seeking leave is that the conversion of the suit to a commercial suit requires the plaintiff to seek leave of the Court. Thus, the learned Judge has failed to consider the reasons in the application for leave to produce the documents. If the documents were already disclosed in the list filed along with the plaint, there was no reason for the applicants to file an application seeking leave to produce documents. After referring to the pleadings in the plaint, it cannot be said that the documents sought to be relied upon are not referred to in the specific pleadings. No prejudice would be caused to the defendants if leave is granted to the plaintiffs to produce documents referred to in Annexure-A to the affidavit to the notice of motion.

8. Sub-Rule (5) relied upon by the learned counsel for the defendant does not provide any outer limit to seek leave of the Court. The provision for the requirement of leave is when the plaintiff wants to rely upon documents that are not filed along with the plaint. Hence, in the absence of any outer limit, I see no reason to disallow the plaintiff's prayer to produce the documents. The

requirement in sub-rule (5) is that the plaintiff establish a reasonable cause for non-disclosure of the documents along with the plaint.

9. The procedural law is the handmaid of justice, and it should primarily serve to facilitate justice, and the procedural rules should not be allowed to become rigid or overly technical. Thus, the defendant no.1's application should not have been rejected. The reasons mentioned by the plaintiff for leave to produce documents is the conversion of the suit into a commercial suit. Hence, the plaintiff has shown reasonable cause to seek leave to produce documents. The petition is therefore allowed by passing the following order:

ORDER

I. The impugned order dated 13th April 2023 passed by the learned Judge, City Civil Court, Mumbai, C.R. No. 32 in Notice of Motion No. 237 of 2023 in Commercial Suit No. 166 of 2022 is modified and the plaintiff is permitted to produce all the documents referred to in the list of documents at

Annexure-A to the affidavit in support of the notice of motion.

10. Writ Petition is allowed in the aforesaid terms.

[GAURI GODSE, J.]

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MASHAL

Digitally signed by
IRESH MASHAL
Date: 2025.06.21
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