

has instructions to oppose the Interim Application in as much as the said documents were even prior to the filing of the Suit in the Plaintiff/Applicant power, possession, control and custody, but were not filed with the Complaint and in view of the provisions of Order XI Rule 1 of the Code of Civil Procedure, 1908 ("CPC") as amended by the Commercial Courts Act, 2015 and as applicable to the Commercial Courts cannot be permitted.

3. Upon a query from the Court to Mr. Gandhi as to whether he has instructions to oppose the other consequential amendments except Exhibits H-11 to H-14, Mr. Gandhi answers in the negative.

4. Mr. Fernandes, learned Counsel appearing for the Applicants, draws this Court's attention to Order XI Rule 1(c)(ii) of the CPC as applicable to the Commercial Courts and submits that although the general rule at the time of disclosure and discovery of documents is that the Plaintiff shall file a list of all documents and photocopies in its power, possession, control or custody, pertaining to the Suit along with a Complaint, however, nothing in the rule applies to documents produced by the Plaintiffs in answer to any case set up by the Defendants subsequent to the filing of the Complaint.

5. Mr. Fernandes submits that after the filing of the Plaint in which in paragraph 10, the Plaintiff had submitted that the Plaintiff's statutory dues were required to be paid without the Plaintiff being compelled to file any suit in as much as the Plaintiff had raised bills as per the scale of rates having force of law, the Defendants in the written statement have annexed the scale of rates for the period 1st December, 2006 to 2012 although the bills in respect whereof recoveries are sought by way of the Suit are for a period post 2012. Mr. Fernandes submits that, therefore, the amendments sought including the Exhibits H-11 to H-14 are nothing but the applicable scale of rates from 1st May, 2017 to 3rd October, 2019 and the same are in response/in answer to an erroneous case sought to be set up by the Defendants in their written statement. Mr. Fernandes further submits that under Order VI Rule 17 of the CPC, the Court is to consider and allow amendments to pleadings as may be necessary for the purpose of determining real question in controversy between the parties. Learned Counsel submits that the issues are yet to be framed and the trial has not yet commenced. That the said amendments do not seek to change the nature of the Suit which remains one for recovery of the Plaintiff's dues. The Plaintiff cannot, therefore, be denied an opportunity to meet the claim of the Defendants raised in the written statement.

6. In support of his contentions, Mr. Fernandes has relied upon the decision of the Hon'ble Delhi High Court in the cases of *(i) Valo Automotive Pvt. Ltd.*¹ *(ii) Hassad Food Company Q. S.C and Anr*². *Vs Bank of India and Ors.* and *(iii) Bennett Coleman & Co. Ltd. Vs. ARG Outlier Media Pvt. Ltd and Ors.*³

7. Mr. Fernandes submits that accordingly this Court may allow the Interim Application, so that the Court can fully determine the dispute between the parties.

8. Mr. Gandhi, learned Counsel for the Defendants on the other hand submits that as a general rule the Plaintiff ought to have filed all the documents in its power, possession, control or custody pertaining to the Suit along with the Complaint and that it has not been denied that the Exhibits H-11 to H-14 were not in the power, possession, control or custody of the Plaintiff at the time of filing the Suit. Mr. Gandhi relies upon the decision of a Single Judge of this Court in *Sony Music Entertainment India Pvt. Ltd Vs. Ilaiyaraaja Music N. Management Pvt. Ltd and Ors.*⁴.

1 2021 SCC OnLine Del 4080

2 2019 SCC OnLine Del 10647

3 2023 SCC OnLine Del 1457

4 IAL 25506 of 2023 in COMIP Suit 560 of 2022

9. Mr. Gandhi submits that since the documents were in the power, position, control and custody at the time of the filing of the Plaint, the rigours of the Order XI Rule 1 of the CPC applies and considering the decision of this Court in the case of ***Khanna Rayon Industries Pvt. Ltd Vs. Swastik Associates & Ors.***⁵, the said rule would also apply to the Order VI Rule 17 of the CPC.

10. Mr. Gandhi, submits that therefore the said amendments to introduce Exhibits H-11 to H-14 be rejected.

11. I have heard the learned Counsel and considered the rival contentions.

12. It is not in dispute that the rigours of Order XI Rule 1 of the CPC as amended by the Commercial Courts Act, 2015 would apply to application filed under Order VI Rule 17 of the CPC. The general rule is that the Plaintiff is required to file along with the Suit all documents in its power, possession, control or custody pertaining to the Suit and pursuant to Rule 1(5) of Order XI as applicable to Commercial Courts, the Plaintiff shall not be allowed to rely on documents which were in

⁵ IA 5251 of 2022 in COMS 316 of 2020

the Plaintiff's power, possession, control or custody and not disclosed along with the Plaint except by leave of the Court and that such leave shall be granted only upon the Plaintiff establishing reasonable cause for non disclosure along with the Plaint.

13. Order VI Rule 17 of the CPC permits the Court to consider and allow the amendments to pleadings as may be necessary for the purpose of determining the real question in controversy between the parties. It is not the case of the Defendants that the amendments sought would change the nature of the Suit or even the cause of action. The Suit remains for recovery of port dues. Admittedly, the issues are yet to be framed and the trial is yet to commence. The need to introduce Exhibits H-11 to H-14 has been necessitated in view of the scale of rates applicable for the period 1st December, 2006 to 2012 annexed to the written statement. The same is not denied by the Defendants. It is not in dispute that the claim in the Suit is for the subsequent period. It is also not that the Plaintiff had not referred to the scale of rates. Paragraph 10 of the Plaint clearly sets out that the Plaintiff has raised the bills as per the scales of rates which have the force of law. The Plaintiff's case is that the applicable scale of rates would be the scale of rates for the period 1st May, 2017 to 3rd October,

2019. Exhibits H-11 is the scale of rate dated 1st May, 2017 in respect of port dues, pilotage dues and anchorage charges. Exhibits H-12 is the scale of rate dated 10th August, 2018 in respect of the anchorage charges. Exhibit H-13 are the copies of the relevant pages of the scale of rate dated 1st May, 2018 in respect of the anchorage charges and Exhibit H-14 are relevant pages of the scale of rate dated 3rd October, 2019.

14. The Suit has been filed for recovery of dues, which include port dues, pilotage dues and anchorage charges. The exhibits sought to be introduced by way of the amendment would be necessary for the Plaintiffs to establish their claim as the rates are specified therein viz. to determine the real controversy in question. A plain reading of the Order XI Rule 1 (c) (ii) which is applicable while considering an application under Order VI Rule 17 clearly suggests that in answer to any case set up by the Defendants subsequent to the filing of the Plaint, the general rule that all documents in power, possession, control or custody to be filed along with the Plaint would not apply. In the facts of this case, Exhibits H-11 to H-14 are sought to be introduced by way of an amendment in answer the scale of rates annexed by the Defendants

in their written statement. Reasonable cause for non disclosure along with the Plaint has also been made out.

15. In view of the aforesaid discussion and in view of the decisions relied upon by the learned Counsel for the Applicant, I am of the view that the amendments be allowed. The principles discussed in the decisions of *Khanna Rayon Industries Pvt. Ltd Vs. Swastik Associates & Ors.(supra)* and *Sony Music Entertainment India Pvt. Ltd Vs. Ilaiyaraaja Music N. Management Pvt. Ltd and Ors. (supra)* are time tested and aid the case of the Applicant, however, the facts in the case of *Sony Music Entertainment India Pvt. Ltd Vs. Ilaiyaraaja Music N. Management Pvt. Ltd and Ors. (supra)* are distinguishable and the said decision would not aid the case of the Defendants.

16. Ergo, the Interim Application is accordingly allowed in terms of prayer clause (a), which reads thus:-

“(a) The Applicants/ Plaintiffs be given liberty to amend the Plaint, Synopsis, List of Documents etc. and other proceedings as per the Schedule annexed to the Interim Application.”

17. Let the amendments be carried out within a period of two weeks.
Re-verification is dispensed with.

18. Let the amended Complaint and proceedings be served within a period of two weeks thereafter and an appropriate affidavit of service be filed.

19. The Interim application accordingly stands disposed of as above.

(ABHAY AHUJA, J.)

Digitally
signed by
NIKITA
YOGESH
GADGIL
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