



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1691 OF 2025

(M/s. Shah Nanji Nagsi Exports Pvt. Ltd. Vs. SNT and Company, through its partners Mr. Raman Kakkar and Gunjan Kakkar)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Sahil S. Dewani, Counsel for the petitioner.

Mr. H.T. Bewali h/f Mr. T.H. Bewali, Counsel for the respondent.

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CORAM : ANIL L. PANSARE, J.
MARCH 28, 2025

Heard.

2] The challenge is to order dated 3/2/2025 passed below Exh. 25 by the District Judge – 7 and Additional Sessions, Judge, Nagpur, in Trade Mark Suit No. 7/2024.

3] The respondent – defendant filed written statement, and along with it, no document was filed. The respondent then filed application seeking permission to take on record certain documents. The application was opposed by the petitioner – plaintiff on the ground that since the documents were not disclosed in terms of Order XI Rule 1(9) of the Code of Civil Procedure, 1908 (for short “the Code”), as amended by the Commercial Courts Act, 2015 (for short “Commercial Courts Act”), unless the defendant establishes that it had a reasonable cause for non-disclosing such documents along with written statement, the documents could not be allowed to be produced.

4] The trial Court noted that the suit under question is filed under the provisions of the Trade Marks Act, 1999 (for short “Trade Marks Act”) and not under the provisions of the Commercial Courts Act. The Court further noted that the documents, which are sought to be produced, are public documents, and are necessary for just decision of the case. The Court then noted that the office of the respondent – Company is situated at Bareilly (U.P.) and, therefore, the Court found substance in the contention of the respondent’s Counsel that the produced documents were not within its possession and control, and accordingly, were not produced while filing the written statement. The Court, thereafter, relied upon the judgment of the High Court of Delhi in *Vijay Kumar Varshney Vs. Longlast Power Products Ltd. and Another* [2023 SCC OnLine Del 3775], wherein the Court had permitted production of documents. The trial Court was also of the view that since the suit is at initial stage, the respondent should be allowed to produce documents.

5] The learned Counsel for the petitioner has relied upon the judgment of the High Court of Delhi in *Bela Creation Pvt. Ltd. Vs. Anuj Textiles* [2022 SCC OnLine Del 1366], wherein the Court held that permission to produce documents was rightly rejected on the count that the petitioner therein failed to show reasonable cause within the meaning of Order XI Rule 1(10) of the Code.

6] Thus, the question that requires answer is whether the respondent had shown reasonable cause for not filing these documents along with written statement.

7] As stated earlier, the trial Court had noted that these documents were not in possession of the respondent. The learned Counsel for the petitioner submits that there are reasons to believe that these documents were in possession of the respondent inasmuch as in the list of documents filed by the respondent, the dates of documents varies from May – 2015 to August – 2024. Thus, on the basis of the dates of documents, the petitioner’s Counsel wants this Court to believe that these documents must be in possession of the respondent.

8] I do not find substance in the argument inasmuch as there are many instances, and even contingencies where the party to the litigation can get their hands to the documents pending litigation or even thereafter. In other words, the date of document would be not relevant to infer that it must be in possession of the party. Thus, the trial Court’s finding that the respondent was not in possession and control of these documents, appears to be in consonance with the material placed before it.

9] The petitioner’s Counsel then invited my attention to the Statement of Truth under Rule 15-A of Order VI and Rule 3 of Order XI under First Schedule of the Commercial Courts Act. The following is the declaration, which is required to be made by the party :

*“I the deponent do hereby
solemnly affirm and declare as under :-*

1 to 4

5. *I say that all documents in my power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by me have been disclosed and copies thereof annexed with the plaint, and that I do not have any other documents in my power, possession, control or custody.*

6 to 8”

The argument is that since this declaration was made, the trial Court could not have allowed the respondent to produce documents at later stage.

10] I do not find that once the aforesaid declaration is made by the party, it would be prevented from filing documents at later stage. By the declaration, the party is supposed to disclose/declare that the documents, which were in its possession, power and control, have been disclosed and copies thereof annexed with the plaint and that it has no other document in possession, power and control. This would mean that the documents, which were in possession, power and control, have been filed by the party and, therefore, if subsequently, certain documents are disclosed or obtained in possession, the party would be at liberty to produce it with the only rider as is envisaged under Order XI Rule 1(10) of the Code, which would require the defendant to establish reasonable cause for non-disclosure of such documents.

11] In the present case, the trial Court has, thus, rightly interpreted Order XI Rule 1(10) of the Code when it noticed that the documents sought to be produced by the respondent were not in its possession.

12] In any case, the suit being at the initial stage, and since the Court is of the view that the documents sought to be produced are necessary to decide the controversy, I do not find this to be a fit case to exercise jurisdiction under Article 227 of the Constitution of India.

13] The petition is dismissed. No costs.

14] The issue as to whether the suit under question is commercial suit, even if filed under the provisions of the Trade Marks Act, is kept open.

(ANIL L. PANSARE, J.)

Sumit