



\$~1

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

+ CM(M)-IPD 20/2024, CM 99/2024-Stay

PARIS FOODS AND CHEMICAL INDUSTRIESPetitioner

Through: Mr. Rahul Beruar, Ms. Nidhi Jain
and Ms. Jyotsana Sinha, Advs.

Versus

MARTBAAN

.....Respondent

Through: Mr. Vipin Wason and Ms. Stuti
Wason, Advs.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

%

28.05.2025

1. By virtue of the present petition under *Article 227* of the Constitution of India read with *Section 151* of the Code of Civil Procedure, 1908, (CPC), the petitioner seeks direction for setting aside the order dated 03.10.2023 (“**impugned order**”) passed by the learned District Judge in CS (COMM) 532/2022, pending before the Patiala House Court, New Delhi, wherein, additional documents filed by the respondent were allowed to be taken on record belatedly.

2. On 06.06.2022, the respondent instituted a suit for infringement of its trademark registration nos.4019337 and 4772845, but then failed to adduce evidence/ documents, even after the learned District Court took the amended plaint on record. Thereafter, the respondent filed an application for bringing on record additional documents i.e. invoices issued by the respondent, which was allowed by the learned District Judge after



imposition costs of Rs.10,000/-, however, without issuing any notice nor granting an opportunity to file a reply thereto to the petitioner and despite there being any reasons given by the respondent for not filing the said invoices along with the plaint and/ or the amended plaint.

3. Primarily, learned counsel for the petitioner submits that the impugned order is bad in law, as the same is contrary to the provisions of the Commercial Courts Act, 2015, which has provided strict timelines to be followed in commercial disputes. Reliance is placed on ***Bharat Agarwal & Ors v. NDMC Limited 2024:DHC:4782 and TTK Prestige Limited vs. Baghla Sanitaryware Private Limited & Ors. 2024:DHC:1149.***

4. Learned counsel for the petitioner then, relying upon ***Sudhir Kumar @ S. Baliyan v. Vinay Kumar G.B: 2021 SCC OnLine SC 734, Bela Creation Private Limited v. Anu Textiles, 2022 SCC OnLine Del 1366 and TTK Prestige Limited (Supra)***, submits that as per Order XI Rule 1(5) of the CPC read with Order XI Rule 1(1) of the CPC, the respondent was prohibited from relying on additional documents, which were in its possession and were not disclosed, without seeking leave of the Court, which is not the case herein.

5. *Per Contra*, learned counsel for the respondent in support of the impugned order submits that the same is a conditional order whereby the filing of the additional documents was subject to payment costs of Rs.10,000/- payable to the petitioner, as also it allowed the petitioner to file rebuttal documents, if any.

6. This Court has heard the arguments of the learned counsels for the parties and has also perused the documents as well as judgements cited by



both the parties.

7. The impugned order under challenge is a well-reasoned order which clearly records as under:-

“... it is settled law that as far as possible, all the matters should be decided on merits rather than on technicalities. Inadvertence on behalf of the plaintiff can always be compensated in terms of cost(s). In these circumstances, in the interest of justice subject to the plaintiff bearing cost(s) of Rs. 10,000/- to be paid to the defendant, the said documents are allowed to be taken on the record with liberty to the defendant to file documents in rebuttal, if any. The above application stands disposed of accordingly...”

8. Further, considering the stage of the proceedings before the learned Trial Court as also that the petitioner has been specifically granted time to file a response thereto, this Court finds no reason to interference with the same and concurs with the reasonings given therein. Moreover, since it is not in dispute that the petitioner has since received the costs of Rs.10,000/-, it has acquiesced therein and there is no reason left for it to agitate his grounds by way of the present appeal. In fact, by accepting the said costs, the petitioner effectively acknowledges the validity of the order. Having already availed the benefits under part of the order, the petitioner is estopped from subsequently disputing or challenging the order and the said right to challenge the order is waived. In fact, a Co-ordinate Bench of this Court in **Mehboob Ahmad & Ors. vs Muneer Ahmed & Ors. 2024:DHC:8196** held as under:-

“...The said principle has also been applied by the Courts in dealing with challenges to orders of the Court after acceptance of costs. It has been held that acceptance of costs amounts to acceptance of the order as correct and having taken benefit of one part of the order, a party cannot turn around and say that he will also challenge the order. It has been held that by allowing the party to challenge the order amounts to nullifying the acceptance of costs; a litigant cannot approbate and



reprobate; he had two options, either to accept the costs and treat the order as correct or not to accept the costs and to challenge the order; having elected to accept the costs, he is estopped from thereafter challenging the order...”

9. The same is the view expressed in ***Amrish Agarwal Vs. Venus Home Appliances Pvt. Ltd.*** 2019:DHC:4184, ***IFFCO Tokio General Insurance Co. Ltd. Vs. Inder Travesls Pvt. Ltd. & Ors.*** 2024:DHC:5632 and ***S.P. Chengalvaraya Naidu (Dead) by L.Rs. Vs. Jagannath (Dead) by L.Rs. and Ors.*** (1994)1SCC 1 as well, which again reflect that once the petitioner has accepted the costs before the first hearing, it is an implied conduct that it has waived the right to challenge the impugned order.
10. Moreover, ***Bharat Agarwal (Supra)*** and ***TTK Prestige Limited (Supra)*** relied upon by the petitioner are distinguishable on the facts, as there was no waiver of the right to object after accepting the costs for such delay in filing of additional documents.
11. In view of the aforesaid, this Court does not find any error in the decision of the learned District Judge in allowing the respondent's application for permission to file additional documents.
12. Accordingly, the present appeal is dismissed.

SAURABH BANERJEE, J.

MAY 28, 2025/So