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

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Reserved on: 2nd December 2024

Pronounced on: 17th February 2025

+ **CM(M) 3951/2024 & CM APPL. 70109/2024 & CM APPL. 70110/2024**

SH JAIPAL SHARMA TRUST & ORS.

.....Petitioners

Through: Mr Karunesh Tandon, Mr
Abhishek Singh and Mr
Rahul Chauhan, Advs.

versus

**SRM EDUCATIONAL AND FINANCIAL CONSULTANT
PVT LTD**

.....Respondent

Through: Mr Anil K. Mishra, Mr
Nakul Grover and Mr
Satyam Shivaach, Advs.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. This petition under Article 227 of the Constitution of India has been filed by the petitioners, seeking to set aside the impugned orders dated 07.11.2024 and 14.11.2024 passed by the learned District Judge in Suit bearing No. CSDJ 1332/2018, titled “M/s. SRM Educational and Financial Consultant Pvt. Ltd. Vs. Jaipal Singh Sharma Trust”. Petitioners has raised concerns regarding procedural irregularities and substantive legal errors in the Trial Court’s findings.



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FACTUAL BACKGROUND

2. Respondent filed a Suit for Recovery against the petitioners. Originally, it was filed as an ordinary Civil Recovery Suit. Upon an application filed by the respondent, the suit was transferred to the Commercial Court, considering it as a commercial dispute.
3. Both parties were directed to file affidavits of admission/denial of documents under Order XI Rule 4 CPC.
4. The Trial Court noted that the affidavits of admission/denial of both the parties were not as per the provisions of the Commercial Courts Act, 2015 and therefore they were directed to file fresh affidavits within three weeks. On the next date i.e., 07.11.2024, counsel for the petitioners did not appear before the Trial Court. The Trial Court took note of the filing of affidavit by the respondent. Since no affidavit was filed by the petitioners, right of petitioners to file the affidavit of admission/denial was closed.
5. Later in the day, counsel for the petitioners appeared before the Trial Court and undertook to e-file the affidavit of admission/denial during the course of the day.
6. On the next date i.e. 14.11.2024, the Trial Court's order records that petitioners had filed two sets of affidavits of admission/denial of documents, one in respect of documents filed with the plaint and the other with regard to the additional documents that were taken on record on 12.04.2022. The Trial Court was of the view that the affidavit of admission/denial filed by the petitioners was not in a proper format and also noted that the column of mode of execution



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was left blank in respect of few documents. Further, these columns do not provide the information in terms of provision of Order XI Rule 4 CPC.

7. Petitioners had also filed separate applications under Order VII Rule 14 CPC for filing additional documents on record and under Order XIV Rule 5 CPC for framing of additional issues. Both these applications came to be dismissed by the trial court vide order dated 14.11.2024.

SUBMISSIONS OF THE PETITIONERS

8. Learned counsel for the petitioners has made following submissions:

- i) The rejection of affidavit of admission/denial was totally unwarranted. Petitioners submit that even if the affidavit did not strictly comply with the requirements of Order XI Rule 4 CPC, the defects were curable and should not have led to outright rejection. The Courts have consistently held that procedural lapses should not impede substantial justice.
- ii) The affidavit was electronically filed on 07.11.2024 and the hard copy was submitted on 14.11.2024. The Trial Court's observation that it was not in the required format, does not justify its exclusion as the deficiencies could have been rectified.
- iii) Trial Court's reliance on strict procedural compliance disregards the principle that procedural law is intended to facilitate justice rather than act as a hurdle.
- iv) The rejection of the application under Order VII Rule 14 CPC



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was erroneous. Petitioners states that the documents sought to be placed on record were already referenced in the written statement but were inadvertently omitted. Order VIII Rule 1-A (3) CPC confers discretion upon courts to permit filing of additional documents at any stage if necessary for adjudication of the case.

v) The Trial Court erred in dismissing the application under Order XIV Rule 5 CPC for framing an additional issue concerning the plaintiff's compliance with its contractual obligations under the MOU dated 11.03.2014. Petitioners argue that the issue is distinct from the issue already framed regarding the entitlement of recovery.

vi) Petitioners contend that failure to frame the additional issue would prejudice its defence as the performance of contractual obligations is crucial to determine the liability and recovery.

SUBMISSIONS OF RESPONDENT

9. *Per contra*, learned counsel for the respondent has opposed the petition on the following grounds:-

i) The Trial Court was correct in rejecting the affidavit of admission/denial as it failed to meet the requirements under Order XI Rule 4 CPC. The affidavit lacks details regarding the execution, custody and correctness of documents.

ii) Application under Order VII Rule 14 CPC was rightly dismissed as the petitioners had ample opportunities to place documents on record at an earlier stage. The Commercial Courts Act, 2015 prescribes strict timelines to prevent delays in adjudication.

iii) The proposed additional issue under Order XIV Rule 5 CPC



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was unnecessary as the core issue of entitlement of recovery already encompasses the alleged non-performance of the contractual obligations. According to the respondent, the additional issue would only serve to prolong the litigation without adding substantive value to the dispute adjudication.

ANALYSIS & CONCLUSION: REG: AFFIDAVIT OF ADMISSION/DENIAL

10. The Trial Court's order to accept the affidavit of admission/denial is unsustainable. Procedural defects, particularly those that are curable, should not result in rejection. As per the principles laid down in *ONGC Vs. Joint Venture of Sai Rama Engineering Enterprises* and *M/s. Megha Engineering & Infrastructure Ltd., FAO (OS) (COMM) 324/2019 dated 09.01.2023*, minor procedural lapses must not be used to deny adjudication on merits. The Trial Court's approach is contrary to the established jurisprudence, which holds that substantive compliance should suffice unless there is gross non-adherence to legal mandates. Petitioners is therefore granted one opportunity to submit a revised affidavit addressing the deficiencies, and the same shall then be taken on record.

APPLICATION UNDER ORDER VII RULE 14, CPC FOR FILING ADDITIONAL DOCUMENTS:

11. At the outset, it is required to be noted that the application for leave to produce additional documents on record was preferred by the petitioners under Order VII Rule 14 CPC. However, considering Order XI Rule 1 as applicable to the Commercial Suits by which the



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CPC has been amended with respect to the suits before the Commercial Court and in view of Section 16 of the Commercial Court's Act, 2015, Order VII Rule 14 CPC shall have no application at all. After Order XI Rule 1 has been amended with respect to the suits before the Commercial Courts and a specific provision/procedure has been prescribed with respect to the suits before the Commercial Division and before the Commercial Court, the provision of the CPC as has been amended by the Commercial Courts Act, 2015 and shall have to be followed. Therefore, in view of Order XI Rule 1 CPC as amended by the amendment in the Commercial Courts Act, 2015 with respect to the suits before the Commercial Courts, the provision of Order VII Rule 14 shall not be applicable at all. Therefore, as such, the petitioners applied the wrong provision seeking leave of the court to place on record the additional documents. However, considering the fact that the learned Commercial Court treated and considered and even applied Order XI Rule 1 CPC as applicable to the suits filed before the Commercial Court, the Court shall proceed to consider the application submitted by the petitioners herein as if the same was submitted under Order XI Rule 1(4) CPC.

12. In the case of *Anita Chhabra & Ors. Vs. Surender Kumar, decided on 26.09.2022, CM(M) 548/2022 and CM 26752/2022*, this Court speaking through C. Hari Shankar J. has been pleased to observe as under:-

“8. Before proceeding to the rival contentions advanced at the Bar, one may refer to the statutory scheme contained in sub rules (1), (4) and (5) of Order XI Rule 1 of the CPC, which deal with filing of documents. Order XI Rule 1(1) requires a plaintiff to "file, along



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with the plaint, a list of all documents in its power, possession, control or custody and photocopies thereof. The documents, therefore, are required to accompany the plaint.

9. In the case of "urgent filing", Order XI Rule 1(4) permits additional documents to be filed by the plaintiff within 30 days of filing of the suit, subject to grant of leave by the Court.

10. Documents, which have not been brought on record either under sub rule (1) or sub rule (4) of Order XI Rule 1, i.e. documents which have not been brought on record till the expiry of 30 days from the filing of the suit, may be brought on record under Order XI Rule 1(5), subject to leave of the Court. Such leave, however, can be granted only on the Plaintiff establishing reasonable cause for non-disclosure of the documents along with the plaint.

11. It may be noted that, though Order XI Rule 1(4) also envisages bringing on record of additional documents not filed along with the plaint, within 30 days of the filing of the plaint, and requires leave of the Court to be obtained in that regard, it does not specifically require the plaintiff, seeking such leave, to establish reasonable cause for non- disclosure of the documents with the plaint. That is a requirement restricted, in the case of the plaintiff, to Order XI Rule 1(5), in respect of the documents which are sought to be brought on record beyond 30 days from the date of filing of the plaint.

Order dated 10th January 2022 of Supreme Court in Re: Cognizance for Extension of Limitation Suo Motu Writ Petition (C) 3/2020 and decision in Centaur Pharmaceuticals Pvt. Ltd. V. Stanford Laboratories Pvt. Ltd., Babasaheb Raosaheb Kobame V Pyrotek India Private Limited⁷ and Prakash Corporates v. Dee Vee Projects Ltd.

17. As already noted, Order XI Rule 1(5) of the CPC requires the petitioners to adduce sufficient cause for failure to disclose the additional documents along with the plaint, in order to be permitted to place the documents on record beyond a period of 30 days from the date of filing of the plaint. The application filed by the petitioners in the present case does not contain any such disclosure, as to why the two documents that the petitioners desired to bring on record were not filed with the plaint. It is admitted that the documents were in the possession, power and custody of the petitioners even when the plaint was filed. All that is stated in the application is that the documents were not brought on record owing to negligence of the learned Counsel who filed the plaint. Negligence of Counsel, quite obviously, cannot constitute



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reasonable cause, within the meaning of Order XI Rule 1(5); else, the very requirement of adducing reasonable cause for failure to disclose the documents with the plaint would be reduced to a formality.

19. If, therefore, Order XI Rule 1(5) were to be applicable, the petitioners clearly have no case.”

13. The relevant paras of the application filed by the petitioners under Order VII Rule 14 CPC (treated as under Order XI Rule 1 CPC) are reproduced below for the proper understanding:-

“3. It is submitted that after filing of the suit for recovery by the plaintiff/non applicant, the Hon’ble Court was pleased to issue notice to Applicant/Defendant. Consequently the defendant/applicant entered into appearance and submitted its written statement along with the relevant documents and raised certain objections in its preliminary objection with regard to maintainability of the suit, failure of the plaintiff for completing and acting upon its contractual obligations also stated a specific objection regarding the concealment of facts by the plaintiff that the plaintiff/ non applicant abandoned the work in August-September 2015 after realising the fact that its survival in providing the technical and architectural consultancy shall be no longer possible as most of the drawings submitted by the plaintiff/non applicant to the defendant/applicant were not only defective in nature but were not prepared in consonance with the building bye laws applicable in respective area. It was also stated that due to the defective architectural drawings and wrong architectural consultancy, faulty work was carried out by the defendant/applicant which ultimately got demolished on account of the consultancy provided by the newly appointed contractor.

4. It is stated and' submitted that the non applicant/ plaintiff after filing their replication to the written statement of the applicant/defendant again filed additional documents on record. It is submitted that though the documents were filed by the defendant with the written statement but, upon scrutiny it transpired that few documents/drawings which were prepared by the architectural & consultancy services hired by the applicant/ defendant later on after the plaintiff/non applicant abandoned the work were necessary to be placed on record. It is submitted that these "drawings are essential and necessary to adjudicate upon the issue of failure of the plaintiff/ non applicant in providing the correct and accurate architectural drawings and the the correct drawings were not



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prepared by the plaintiff/ non applicant but by the other architectural service provider company appointed by the applicant/ defendant. It is also submitted that these drawings/documents are an important and basic part of the dispute and are essential to be taken on record for just and proper of the present suit.

5. It is stated that no prejudice would be caused to the plaintiff/non applicant if these documents/drawings are taken on record. Whereas, if these documents/drawings are not taken on record, it would prejudice the rights and interest of the applicant/ defendant.”

14. The statement of truth filed by the petitioners in support of the written statement, specifically states that all the documents in its power, possession, control and custody have been disclosed and copies thereof have been filed with the written statement. The Trial Court took note that the written statement was filed by the petitioners on 19.01.2019 and they sought to bring the documents on record which were already in their custody, power and possession after more than five years. The Trial Court found no cause, much less sufficient cause for non-production of documents at the appropriate stage.

15. The Trial Court allowed the respondent's application for admission-denial of documents vide its order dated 12.04.2022. Petitioners did not challenge the said order. Merely because the respondent's application was allowed, petitioners cannot seek parity, more so for the reason that they have failed to explain any sufficient cause for not filing the documents at the initial stage. Thus, the challenge to the impugned order to the extent that dismissed the application of the petitioners filed under Order VII Rule 14 CPC therefore cannot be sustained.

APPLICATION UNDER ORDER XIV RULE 5 CPC FOR FRAMING ADDITIONAL ISSUES



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16. By virtue of the application under Order XIV Rule 5 CPC, petitioners made a prayer for framing the following additional issue:-

“Whether the plaintiff acted and completed all its contractual obligations required to be performed under turnkey project/MOU dated 11.03.2014?”

17. The Trial Court was of the view that the issue already framed i.e. *“Whether the plaintiff is entitled to the recovery of the suit amount?”* OPP,” would cover the proposed issue and therefore there was no need for framing a separate issue for the same.

18. As per the factual matrix, petitioners wanted to establish a medical college and hospital, for which, it had approached the respondent for providing consultancy services at its Delhi office. The parties entered into a Memorandum of Understanding dated 11.03.2014. As per the terms of the MOU, respondent was to provide all technical and professional assistance on turnkey basis.

19. The defence of the petitioners in its written statement is that the respondent did not complete its contractual obligations and abandoned the work.

20. In the backdrop of the pleadings of the parties, the entitlement to recovery hinges on whether the respondent fulfilled its contractual duties. The Trial Court therefore finds merit in the petitioners’ argument that the additional issue is not subsumed within the existing issue. The decision on the issue of entitlement of recovery of the suit amount would certainly depend upon the finding on the proposed issue. The issue proposed is therefore necessary for just determination



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of the case. Application under Order XIV Rule 5 CPC filed by the petitioners is therefore allowed and the Trial Court is directed to frame additional issue as proposed.

CONCLUSION

21. In view of the afore-going analysis, the impugned order dated 07.11.2024 is set aside while the order dated 14.11.2024 is partly set aside. Accordingly, this Court directs as under:-

a) Petitioners be granted one opportunity to file affidavit of admission/denial.

b) The following issue as proposed in application under Order XIV Rule 5 CPC filed by the petitioners be framed:-

“Whether the plaintiff performed its contractual obligations arising out of the MOU dated 11.03.2014?” OPP.

22. The petition stands allowed in the above terms. The Trial Court is directed to proceed with the matter in accordance with law.

23. No order as to cost.

RAVINDER DUDEJA, J.

February 17, 2025

RM/r/i/n