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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\# **CNR No. DLHC011089752025**

\+ **CM(M)-IPD 5/2026 & CM 15/2026**

M/S KARIM HOTELS PVT LTD
THROUGH ITS AUTHORISED SIGNATORY: MR. ZIAUDDIN
HAVING ADDRESS AT: 16, GALI KABABIYAN,
BAZAR MATIA MAHAL, NEAR JAMA MASJID,
DELHI - 110006.

.....PETITIONER

(*Through: Ms. Amique Khalid, Ms. Tanzeela Farheen and Ms. Zainab Khan, Advocates.)*

versus

MOHAMMAD TALHA
PROPRIETOR OF M/S GULSHAN-E-KARIM
HAVING ITS ADDRESS: PRINCE ROAD,
NEAR CHADDA CINEMA, GANDHI NAGAR,
MORADABAD, UTTAR PRADESH — 244001

....RESPONDENT

(Through: Ms. Swathi Sukumar, Sr. Advocate with Mr. Shayan Khurram, Mr. Osho Mittal, Mr. Arafat Ali, Mr. Zaid Raza and Mr. Ritik Raghuvanshi, Advocates.)

% Reserved on: 14.10.2026
Pronounced on: 29.10.2026

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JUDGMENT

CM (M) – IPD 5/2026 and CM 15/2026

The petitioner, *vide* the instant petition preferred under Article 227 of the Constitution of India, seeks to assail the order dated 09.12.2025 ('impugned order') passed by the District Judge (Commercial Court)-13, Central District, Tis Hazari Courts, Delhi ('Commercial Court') in CS (COMM) No. 1979/2022, titled *M/s Karim Hotels Pvt. Ltd. v. Mohammad Talha*. By the impugned order, the application of the respondent/defendant under Order XI Rule 1(10) and (12) of the Code of Civil Procedure, 1908 ('CPC'), as amended by the Commercial Courts Act, 2015 ('Act of 2015'), read with Section 151 of the CPC, seeking leave to place on record 25 additional documents, has been allowed subject to costs of ₹20,000/-.

1. The petitioner is engaged in the business of running restaurants and claims to be the registered proprietor of the trade marks 'KARIM', 'KARIM'S' and 'KAREEM', which are stated to have been in use since the year 1913 through its predecessors in interest. The respondent runs a restaurant at Moradabad, Uttar Pradesh, under the name 'GULSHAN-E-KARIM'. Alleging that the said name is deceptively similar to its registered marks, the petitioner instituted the aforesaid suit on 16.08.2022. The respondent filed his written statement on 20.10.2022. His defence, in essence, is that the mark 'GULSHAN-E-KARIM' was coined and adopted by his father in the year 1997 and has been in continuous use ever since. During the pendency of the suit, the respondent also moved an application under Order VII Rule 14 of the CPC for placing certain documents on record

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and another under Order VI Rule 17 of the CPC for amendment of the written statement.

2. The Commercial Court, *vide* order dated 15.01.2025, restrained the respondent from using the impugned mark. The respondent carried the said order in appeal. A Division Bench of this Court, *vide* judgment dated 06.11.2025 in FAO (COMM) 82/2025[1], affirmed the *prima facie* finding of infringement, but permitted the respondent to continue using the mark subject to a conspicuous disclaimer.

3. The documents sought to be placed on record , are as under:-

S. No.	Particulars of Documents
1.	License issued under Uttar Pradesh Khadya Apmishran Niyamawali, 1976 for the years 1998-1999 to 2008-09.
2.	Receipt under Uttar Pradesh Rajya Vidyut Parishad dated 21.02.1998.
3.	U.P. Tax Assessment and Payment Demand Notice (Kar Nirdharan) dated 14.12.2000.
4.	Income Tax Department Intimation under Section 143(1)(a) dated 31.03.1999 and 14.03.2002.
5.	True Copy of Nagar Nigam Moradabad Tax Assessment for buildings/lands dated 02.05.2002.
6.	Receiving of Form No. 2D SARAL dated 01.11.2004.
7.	U.P. Shram Vibhag (Labour Dept.) Registration Certificate showing renewal from 2002 to 2017.
8.	Receipt of membership fee for Udyog Vyapar Pratinidhi Mandal of the year 2003.
9.	Inspection Report under Bonus Bhuktaan Adhiniyam, 1965 of the year 2006.
10.	Summons dated 27.02.2006.
11.	Trade Tax Office Notice of Collection/Action under U.P. Zamindari Abolition and Land Reforms Act.
12.	Receipt of Challan form for depositing U.P. Trade Tax dated 31.01.2007.
13.	Indian Oil Corporation Ltd. (Indane) Customer Subscription Voucher dated 09.02.2008.

[1]Mohammad Talha v. M/s Karim Hotels Pvt. Ltd., 2025 SCC OnLine Del 8240.

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S. No.	Particulars of Documents
14.	Income Tax Department Acknowledgement dated 30.09.2008.
15.	Challan Form for FSSAI Act License Fees for the year 2012-2013 dated 18.04.2012.
16.	Notice dated 19.06.2012 by the Health Officer, Nagar Nigam Moradabad.
17.	Order dated 07.12.2012 in Second Appeal titled M/s Gulshan-E-Karim Restaurant v. Comm. Commercial Tax.
18.	Purchase Invoices from Sahu Banaspati Traders.
19.	Purchase Invoices from Gopal Chand Deepak Kumar.
20.	Purchase Invoice dated 14.08.2014 from M/s Nand Gas Service.
21.	Purchase Invoices from Ganga Traders.
22.	Judgment dated 04.10.2018 in Appeal under U.P. VAT Act titled M/s Gulshan-E-Karim Restaurant v. Asst. Comm.
23.	Account closure certificate from Bombay Mercantile Co-operative Bank (A/c opened 14.07.1998).
24.	Account statement for current account no. 204110100001858 from 01.04.2000 to 17.10.2022.
25.	Income Tax Returns (ITR-V) of Mohammad Talha from 2011-2012 to 2016-2017.

4. The respondent's case before the Commercial Court was that these documents had come to his knowledge and possession only recently, and that he was not even aware of their existence, as they surfaced during some repair or renovation work at his premises. The petitioner opposed the application, contending that no reasonable cause had been shown for not filing the documents with the written statement or even with the respondent's two earlier applications, and that the application had been moved at a belated stage. The Commercial Court allowed the application. The reasoning which led to that conclusion is contained in paragraph nos. 17 and 18 of the impugned order, which read as under:-

> *"17. It has also been submitted specifically on behalf of defendant that these documents could not be filed earlier as the same were not within the*

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knowledge or possession of defendant as the same have been found recently during the course of some renovation or repair work of defendant's premises. This court sees no reason or ground to doubt this claim being made by defendant. Moreover, he could not have been benefited in any manner by not filing of these documents earlier or withholding the said documents from this court, if the same were in his possession or power at the time of filing of his written statement or even at the time of filing of above two applications.

18. Hence, in considered opinion of this court, all these documents which the defendant seeks to file on record through this application are necessary to be taken on record for a just adjudication of the present suit and to properly and effectively decide the rival rights and claims of parties regarding adoption and user of above said mark/name/label/logo as all these documents are found relevant for deciding the said controversy. Though the evidence of plaintiff stands already recorded in this case through a Local Commissioner appointed by the court, but the evidence of defendant is yet to begin. It can also be seen that in terms of provisions contained in Order 11 Rule 1 (12) CPC, the duty of parties to disclose about any of such documents continues till disposal of the suit. The court is also of the view that plaintiff will get a fair opportunity to test the genuineness or veracity of said documents from the depositions to be made by defendant regarding these documents, when he steps into the witness box for his examination, or the other evidence to be produced by him during trial of the case."

5. Learned counsel for the petitioner submits that the impugned order runs contrary to the strict disclosure regime introduced by the Act of 2015, under which belated filing of documents is an exception and not the rule. He contends that the plea of discovery during renovation is bald and self-contradictory, inasmuch as the application itself states that the files were believed to have been lost to termite damage and were later found within the respondent's own premises. He points out that some of the documents were obtained by the respondent on 18.10.2022, two days before the written statement was filed on 20.10.2022.

6. It is further contended that the respondent had availed two earlier opportunities to bring documents on record, and that the present application

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was moved only after the petitioner had closed its evidence, so as to fill up the lacunae in the defence. The impugned order, according to learned counsel, records no finding on possession, due diligence or reasonable cause and proceeds solely on relevance, while the costs imposed cannot undo the prejudice caused. Reliance is placed on ***The Great Gatsby Club of India v. Mahesh Prefab Pvt. Ltd.,***[2] **and** ***M/s Sana Herbals Pvt. Ltd. v. Mohsin Dehlvi***[3].

7. *Per contra,* learned senior counsel for the respondent questions the very maintainability of the petition. He submits that the impugned order is a discretionary, interlocutory order of a Commercial Court which discloses no patent illegality, jurisdictional error or perversity, and that the mere absence of an alternative remedy does not justify interference under Article 227 of the Constitution of India.

8. In support of his submissions, learned senior counsel for the respondent has placed reliance **on** ***Black Diamond Trackparts Pvt. Ltd. v. Black Diamond Motors Pvt. Ltd.,***[4] ***Darrameks Hotels and Developers Pvt. Ltd. v. Brilltech Engineers Pvt. Ltd.,***[5] ***M/s Dhawan Box Sheet Containers Pvt. Ltd. v. National Insurance Company Ltd.,***[6] ***Nandi Infrastructure Corridor Enterprises Ltd. v. B. Gurappa Naidu,***[7] and ***P.J. Sikand v. Guruji Ka Ashram Trust***[8].

9. I have heard learned counsel for the parties and perused the record.

10. Before the correctness of the impugned order can be examined, the

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[2]2022 SCC OnLine Del 2099.
[3]CS(COMM) 813/2016, decided on 05.08.2025.
[4]2021 SCC OnLine Del 3946 (DB).
[5]2025 SCC OnLine Del 4024.
[6]2025 SCC OnLine Del 9472.
[7]2026 SCC OnLine SC 745.

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respondent has raised an objection at the threshold. It is contended that the impugned order is a discretionary, interlocutory order of a Commercial Court, against which the Act of 2015 has consciously provided neither an appeal nor a revision, and that this Court cannot, under the garb of Article 227 of the Constitution of India, do indirectly what the statute does not permit to be done directly.

11. The proviso to Section 13(1A) confines appeals against orders of a Commercial Court to those specifically enumerated in Order XLIII of the CPC, as amended by the Act of 2015. An order under Order XI Rule 1(10) of the CPC finds no place therein. The petitioner, therefore, has neither a remedy of appeal nor of revision against the impugned order. The question is whether, in that situation, the supervisory jurisdiction of this Court is available, and if so, to what extent.

12. The question was answered by a Division Bench of this Court in ***Black Diamond Trackparts*** (supra), on which the respondent himself relies. The Division Bench held that the bar under Section 8 does not, and cannot, oust the constitutional jurisdiction of this Court, but cautioned as under:-

> *"... Allowing petitions under Article 227 to be preferred even against orders against which a revision application under Section 115 CPC would have been maintainable but for the bar of Section 8 of the Commercial Courts Act, would nullify the legislative mandate of the Commercial Courts Act. ... Thus, though we are of the view that gates of Article 227 ought not to be opened with respect to orders in commercial suits at the level of the District Judge against which a revision application under CPC was maintainable but which remedy has been taken away by the Commercial Courts Act, but abiding by the judgments aforesaid, hold that it cannot be said to be the law that jurisdiction under Article 227 is completely barred. However the said jurisdiction is to be exercised very sparingly and more sparingly with respect to orders in such suits which under the CPC were revisable and which remedy has been taken away by*

[8]2026:DHC:8283.

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Signing Date:30.10.2026 17:51:38

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a subsequent legislation i.e. the Commercial Courts Act, and ensuring that such exercise of jurisdiction by the High Court does not negate the legislative intent and purpose behind the Commercial Courts Act and does not come in the way of expeditious disposal of commercial suits."

13. The nature of the supervisory jurisdiction itself was explained by the Supreme Court in ***Garment Craft v. Prakash Chand Goel***[9] in the following words:-

"15. ... The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice."

14. More recently, in ***Nandi Infrastructure*** (supra), the Supreme Court, after considering its earlier decisions in ***Estralla Rubber v. Dass Estate (P) Ltd.***,[10] ***Shalini Shyam Shetty v. Rajendra Shankar Patil,***[11] and ***Garment Craft*** (supra), summarised the principles as under:-

"35. In short, the principles laid down in the above matters is as follows:

a) The power of superintendence under Article 227 is not to be exercised unless there has been an (a) unwarranted assumption of jurisdiction, not vested in Court or tribunal, or (b) gross abuse of jurisdiction or (c) an unjustifiable refusal to exercise jurisdiction vested in Courts or tribunals.

b) It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error,

[9](2022) 4 SCC 181.
[10](2001) 8 SCC 97.
[11](2010) 8 SCC 329.

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Signing Date:30.10.2026 17:51:38

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which is not apparent on the face of the record.

c) The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal."

15. This Court, in ***P.J. Sikand*** (supra), while declining to interfere with an order of a Commercial Court refusing to reject a plaint under Order VII Rule 11 of the CPC, applied these very principles, and observed as under:-

"9. The Court is conscious of the limitations enshrined in the exercise of power under Article 227 of the Constitution of India. The supervisory jurisdiction is not appellate in nature and is not to be exercised to correct every error, much less to substitute a plausible view taken by the Court below. ...

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11. The aforesaid limitations assume greater significance where the order under challenge is an interlocutory order passed by a Commercial Court at the level of the District Judge, in respect of which Section 8 of the Commercial Courts Act, 2015 expressly bars a revision. ..."

16. What emerges from the aforesaid is that the jurisdiction under Article 227 of the Constitution of India is not barred, but is to be exercised very sparingly over interlocutory orders of Commercial Courts. This Court would not interfere merely because another view is possible, or because it would itself have exercised the discretion differently.

17. However, the jurisdiction exists precisely to correct a grave dereliction of duty or a violation of fundamental principles of law, and to keep the subordinate Court within the bounds of its authority. Where a Commercial Court exercises a statutory power without satisfying the very condition on which the statute makes that power depend, the error is no longer one of mere appreciation, and the bar of restraint does not operate on

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a similar footing.

18. It is for this reason that the supervisory jurisdiction of this Court has been exercised, in the context of Order XI of the CPC, on both sides of the line. In ***Bela Creation Pvt. Ltd. v. Anuj Textiles,***[12] this Court, under Article 227 of the Constitution of India, sustained a refusal to take on record additional documents of a defendant under Order XI Rule 1(10) of the CPC. In ***Casa 2 Stays (P) Ltd. v. VLCC Personal Care Ltd.,***[13] an order allowing additional documents without the establishment of reasonable cause was set aside in the same jurisdiction. On the other hand, in ***Darrameks Hotels*** (supra), this Court declined to interfere with an order allowing additional documents, finding that it was a discretionary order free from perversity. The petition is, therefore, maintainable. The real question is whether the impugned order is a plausible exercise of discretion within the statutory framework, or whether it has been passed in disregard of it.

19. A Coordinate Bench of this Court in ***Nitin Gupta v. Texmaco Infrastructure & Holding Ltd.,***[14] dealing with a document which was stated to have been misplaced or not immediately available, held as under:-

> *"38. Unless, the Commercial Divisions, while dealing with the commercial suits, so start enforcing Rules legislated for commercial suits, and refuse to entertain applications for late filing of documents, especially with respect to documents of suspicious character and continue to show leniency in the name of 'interest of justice' and 'a litigant ought not to suffer for default of advocate', the commercial suits will start suffering from the same malady with which the ordinary suits have come to suffer and owing whereto the need for the Commercial Courts Act, 2015 was felt. Commercial Division is thus not required to entertain or allow applications for late filing of documents, without any good cause being established for non-disclosure thereof along with pleadings. The plaintiff*

[12]2022 SCC OnLine Del 1366.
[13]2024 SCC OnLine Del 4587.
[14]2019 SCC OnLine Del 8367.

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herein has utterly failed in this regard. The application nowhere explains as to why the plaintiff, if had obtained the said letter from the defendant, did not remember the same and make disclosure of the same at the time of filing the police complaint and/or at the time of filing of this suit, even if the letter had been misplaced or was not immediately available. The form prescribed for filing affidavit of documents requires a litigant in a commercial suit to, even if not immediately possessed of a relevant document, disclose the same. A litigant who fails to do so and also does not satisfy the Court while seeking to belatedly file the document, why no disclosure of such document was made, cannot be permitted to so file documents."

20. The Supreme Court in ***Sudhir Kumar @ S. Baliyan v. Vinay Kumar G.B.,***[15] drew a clear distinction between documents which were in the power, possession, control or custody of a party when its pleading was filed, and those which were found subsequently. It was held as under:-

"9.6. ... Therefore the plaintiff has to satisfy and establish a reasonable cause for non-disclosure along with plaint. However, at the same time, the requirement of establishing the reasonable cause for non-disclosure of the documents along with the plaint shall not be applicable if it is averred and it is the case of the plaintiff that those documents have been found subsequently and in fact were not in the plaintiff's power, possession, control or custody at the time when the plaint was filed. Therefore Order 11 Rule 1(4) and Order 11 Rule 1(5) applicable to the commercial suit shall be applicable only with respect to the documents which were in plaintiff's power, possession, control or custody and not disclosed along with plaint. Therefore, the rigour of establishing the reasonable cause in non-disclosure along with plaint may not arise in the case where the additional documents sought to be produced/relied upon are discovered subsequent to the filing of the plaint."

21. In ***Bela Creation*** (supra), this Court, dealing with Order XI sub-rule (10), held as under:-

"In the absence of any averment to the effect that the aforesaid declaration, contained in the Statement of Truth accompanying the written statement and counter-plaint filed by the petitioner, was incorrect, the learned Commercial Court was justified in holding that additional documents, which were in the custody of the petitioner at the time of filing

[15](2021) 13 SCC 71.

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the written statement, could not be permitted to be introduced at a later stage. "Reasonable cause", within the meaning of Order XI Rule 1(10) of the CPC, as amended by the Commercial Courts Act, cannot extend to negligence in filing of documents before the Court. "Reasonable cause", necessarily, must refer to a cause which was outside the control of the petitioner, and which prevented the petitioner from filing the concerned documents along with the written statement."

22. This Court in ***M/s Levitate Mobile Technologies Pvt. Ltd. v. M/s Standard Chartered Bank,***[16] after surveying the precedents, summarised the position, *inter alia*, as under:-

"48. ...

v. As a measure of last resort and to take care of unforeseen exigencies, Order XI Rule 1(5) permits the plaintiff to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint, save and except by leave of Court and such leave shall be granted only upon the plaintiff 'establishing' reasonable cause for non-disclosure along with the plaint;

vi. At this stage, the Court is not required to look into the genuineness of the documents as the same is to be considered appropriate to examine during the stage of trial and the only concern is whether the plaintiff has demonstrated that a reasonable cause had prevented it from producing the documents at the first instance;

vii. The phrase 'reasonable cause', as used by the legislature in Order XI Rule 1(5), conveys a comparatively lower degree of proof as compared to the other phrases such as 'sufficient cause' or 'good cause';

viii. However, at the same time, the 'reasonable cause' should be something which ought to be outside the control of the plaintiff and it must have prevented the plaintiff in the first instant from filing such documents at the time of presentation of the plaint;

ix. Moreover, the purported reasons or bald assertions like 'change of counsels', 'advice of Registry', 'bona fide belief that those documents were already in the record of the Court', 'voluminous/bulky nature of documents' etc. under normal circumstances on its own, does not give the imprimatur that 'reasonable cause' has been established. The fundamental pre-requisite of 'reasonable cause' requires something more that would have prevented the plaintiff from placing those documents on record at the earliest opportunity.

[16]2025 SCC OnLine Del 818.

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> *x. Having said so, the legislature has consciously used the word 'establishing' in Order XI Rule 1(5) so as to convey that the 'reasonable cause' must be established to the satisfaction of the Court, as opposed to merely showing or averring or pleading the bald assertion of reasonable cause."*

23. Even in ***Darrameks Hotels*** (supra), on which the Commercial Court and the respondent have both placed considerable reliance, this Court did not dilute the requirement of a cause. It observed as under:-

> *"19. The aforesaid provision of Order XI Rule 1 (5) CPC comes into play when plaintiff, despite having power, possession, control and custody of any document, fails to place the same on record, alongwith suit or within the extended period. In case of belated filing, these documents can be permitted to be placed on record by Court if plaintiff establishes reasonable cause for non-disclosure.*
>
> *20. It is important to mention here that cause, which is to be shown by the plaintiff, is "reasonable" and not "sufficient or good" and use of word "reasonable" makes the provision little less rigorous. Of course, the plaintiff should have been careful and should have placed on record these e-mails along with his plaint. Merely because, there was voluminous exchange of e-mails between the parties would not, generally speaking, absolve any such party.*
>
> ***
>
> *31. There cannot be any straightjacket formula as to when any such application moved under Order XI CPC, seeking to place on record additional document, is to be allowed and when to be dismissed. This has to be ascertained after evaluating factual matrix of any such given case, the stand taken in the pleadings, the nature of the document and its relevancy and reason assigned for belated filing."*

24. The inquiry under sub-rule (10) is, thus, a structured one. The Court must first ascertain whether the documents were in the power, possession, control or custody of the defendant when the written statement was filed. If they were not, the rigour of the provision does not arise at all. If they were, leave can be granted only upon the defendant establishing, to the satisfaction of the Court, a cause outside his control which prevented him from filing them with the written statement. The expression 'reasonable cause' is

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Signing Date:30.10.2026 17:51:38

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Signed By:PURUSHAINDRA KUMAR KAURAV

undoubtedly elastic, but its elasticity relates to the degree of proof, and not to the existence of a cause. Relevance of the documents is a necessary condition for their admission, but it is not a sufficient one.

25. Tested on this touchstone, the impugned order, in the considered opinion of this Court, does not undertake the inquiry which sub-rule (10) mandates.

26. The threshold question, namely, whether the documents were in the respondent's power, possession, control or custody on 20.10.2022, has not been answered at all. A glance at the documents tabulated above would show that they are licences, tax assessments, income tax intimations and returns, labour registrations, purchase invoices, bank records and orders of tax authorities, all relating to the respondent's own restaurant business and issued either to him or to his predecessor. These are the respondent's own business record. They were lying in his own premises, and were found there during renovation.

27. Records of one's own business, kept in one's own premises, remain in one's custody whether or not one remembers where they have been kept. As held in ***Nitin Gupta*** (supra), a litigant in a commercial suit is obliged to disclose even a document which has been misplaced or is not immediately available. The case of the respondent, therefore, did not fall within the exception carved out in ***Sudhir Kumar*** (supra). The Commercial Court, however, accepted the averment that the documents were "not within the knowledge or possession" of the respondent as if it were conclusive, without examining whether, on the respondent's own case, the documents were in his custody.

28. The Commercial Court has also accepted the explanation by

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Signed By:PRIYA
Signing Date:30.10.2026 17:51:38

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observing that it "sees no reason or ground to doubt this claim". With respect, that is not the test. The statute requires the defendant to "establish" reasonable cause; it does not require the Court, or the opposite party, to find a reason to doubt it. The application did not disclose when or where the renovation took place, who found the documents or where they had been kept. The explanation has, moreover, not remained the same. Before the Commercial Court, it was one of termite damage and renovation. Before this Court, the renovation has been attributed to a family wedding, and the respondent has added that the business was run by his father, that he was young at the time, and that, being a layperson, he could not appreciate the relevance of the documents until his counsel examined them. None of these is a cause outside the respondent's control.

29. A party's inability to appreciate the relevance of its own records is not a cause at all, since sub-rule (7) obliges disclosure of all documents relating to any matter in question, whether favourable or adverse. It is also not to be lost sight of that the plea of user since 1997 has been the respondent's defence from the very inception; the need for documents of that period was, therefore, apparent when the written statement was filed.

30. Therefore, the inquiry had to begin with whether a cause existed for not filing the documents with the pleading. That inquiry was never undertaken. In effect, the test of relevance and necessity has been substituted for the test of reasonable cause which the statute prescribes.

31. The documents now sought to be introduced include purchase invoices, bank records and tax documents for the very period. This Court is conscious that the said observations were made at the *prima facie* stage and expresses no opinion on the merits of the respondent's defence. However,

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the sequence of events was plainly relevant in testing the bona fides of the explanation offered, and the Commercial Court did not advert to it. This Court in ***M/s Levitate Mobile Technologies*** (supra), in a somewhat similar situation, observed as under:-

> *"69. The plaintiff appears to have slept over the documents for a considerable period of time and it is only after the evidence of PW1 was over, it has woken up from its deep slumber. It appears that the primary consideration for filing these documents at this belated stage is to fill-up the lacuna in evidence of PW1. This application is yet another example of dilatory tactics being resorted to, which ultimately hinders the progression of the commercial suit and inhibits taking the civil dispute to its logical end with due expedition. It is apposite to note that procedural law cannot be applied to permit the parties to twist and turn the case as per changing scenarios, by resetting and revisiting the procedural stages in a light-hearted manner."*

32. This brings the Court back to the question, whether the infirmities noticed above are mere errors in the exercise of discretion which this Court ought to leave alone, or whether they warrant interference.

33. In the opinion of this Court, they are of the latter kind. Sub-rule (10) does not confer an open-ended discretion on the Commercial Court. It mandates that leave "shall be granted only upon the defendant establishing reasonable cause". The establishment of reasonable cause is, thus, a condition precedent to the exercise of the power to grant leave. When leave is granted without examining possession, without any finding of reasonable cause, by ignoring material which belies the explanation, and by substituting a test of relevance for the statutory test, the Commercial Court has not merely taken one of two possible views. It has exercised the power without the condition on which alone the statute permits it to be exercised. That is a flagrant violation of the statutory mandate, which falls within the narrow compass described in ***Garment Craft*** (supra) and ***Nandi Infrastructure***

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(supra).

34. If the impugned order were allowed to stand, the trial would proceed on documents which the statute bars the respondent from relying upon. The error could then be corrected, if at all, only in an appeal against the final decree, after the entire trial had been conducted on a record which ought not to have been. That would cause grave injustice to the petitioner and would defeat the very object of the Act of 2015. The imposition of costs of ₹20,000/- cannot be a substitute for compliance with a statutory pre-condition.

35. In view of the aforesaid, this Court is of the considered opinion that the impugned order dated 09.12.2025 suffers from a manifest error in the exercise of jurisdiction under Order XI Rule 1(10) of the CPC, which goes to the root of the matter and warrants interference under Article 227 of the Constitution of India. The documents sought to be placed on record were in the power, possession, control or custody of the respondent when the written statement was filed, and the respondent has failed to establish any reasonable cause for their non-disclosure along with it.

36. Accordingly, the petition is allowed.

37. The impugned order dated 09.12.2025 is set aside, and the application of the respondent under Order XI Rule 1(10) and (12) read with Section 151 of the CPC stands dismissed.

38. Nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case of either party, including the respondent's plea of adoption and user of the mark 'GULSHAN-E-KARIM' since the year 1997, which shall be adjudicated on the basis of the material on record, in accordance with law.

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39. The petition, along with the pending application, stands disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

OCTOBER 29, 2026
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