



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

% Judgment reserved on: 16.05.2025
Judgment delivered on: 26.05.2025

+ CM(M) 2333/2024 & CM APPL. 21568/2024
DARRAMEKS HOTELS AND DEVELOPERS PRIVATE
LIMITEDPetitioner

VERSUS

BRILLTECH ENGINEERS PRIVATE LIMITEDRespondent

Memo of Appearance

For the Petitioner: Mr. Amandeep Singh and Mr. Pradeep Desodya,
Advocates

For the Respondents: Mr. Ankur Singhal, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. Petitioner herein is defending a suit which is commercial in nature.
2. Pursuant to a tender issued by defendant, the plaintiff participated in tender process and was, eventually, awarded contract. The suit in question seeks recovery of Rs. 65,24,759/- which, according to plaintiff, is towards outstanding payment with respect to the abovesaid contract. The plaintiff also contends that the defendant was responsible as it failed to complete various civil works related to road, approach road, building etc.
3. As per defendant, whereas, the plaintiff has failed to perform its contractual obligations.



4. There were, admittedly, exchange of various e-mails between the plaintiff and the defendant and many of these are already referred in pleadings.

5. During the pendency of the suit, the plaintiff moved an application under Order XI Rule 1(4) of CPC read with Section 151 CPC seeking permission to rely upon some more e-mails which had been exchanged between them.

6. According to the plaintiff, though there were voluminous exchange of e-mails but it wanted to rely and refer to 75 such e-mails which would go on to show that the stand taken by the defendant is a false one.

7. While moving the above application, it gave specific details of all such 75 e-mails and annexed printouts of the same. It was submitted before the learned Trial Court that these e-mails were necessary for fair and just adjudication of the suit and, therefore, it prayed that leave be granted to the plaintiff to place on record such e-mails.

8. After perusal of the averments made in the pleadings and after hearing both the parties, the learned Trial Court came to the opinion that the plaintiff was able to establish, in terms of Order XI Rule 1(5) CPC, *reasonable cause* for non-disclosure of said e-mails along with plaint. It also observed that though, it was also appropriate for the plaintiff to have filed replication, explaining about the e-mails which were now sought to be placed on record but in order to balance out the situation, the learned Trial Court, while also permitting the plaintiff to file a replication,



allowed the abovesaid application and, simultaneously, the defendant was also given an opportunity to file trailing emails, if any.

9. Such order dated 30.11.2023 is under challenge.

10. The prime grievance coming from the side of the defendant is two-fold.

11. Firstly, plaintiff never sought any permission or liberty to file any replication and, therefore, the Court should not have, *suo moto*, granted any such opportunity.

12. Secondly, the provision contained under Order XI Rule 1(5) CPC, as applicable to commercial dispute, is very stringent in nature and though the case was still at the initial stage and the issues had yet not been framed, the application deserved to be dismissed as the plaintiff had not been able to come up with any *reasonable cause*. Moreover, all these e-mails were, all along, under power, possession and control of plaintiff and there was no one to prevent it to have placed these on record, at the time of institution of the suit. Relying upon *Sudhir Kumar @ S. Baliyan vs. Vinay Kumar G.B.: (2021) 13 SCC 71*, *Anita Chhabra and Others vs. Surender Kumar: 2022 SCC OnLine Del 3089* and *Casa 2 Stays Pvt. Ltd. vs. VLCC Personal Care Ltd.: 2024 SCC OnLine Del 4587*, it is submitted that the impugned order needs to be set aside.

13. All such contentions have been refuted by learned counsel for respondent/plaintiff and, they, on strength of *Khurmi Associates (P) Ltd. vs. Maharishi Dayanand Co-Operative Group Housing Society: 2022 SCC OnLine Del 1011*, *Bennett Coleman & Co. Ltd. v. ARG Outlier*



Media Pvt. Ltd. and Others: 2023 SCC OnLine Del 1457, Sudhir Power Projects Ltd. v. Prime Meiden Pvt. Ltd.: 2023 SCC OnLine Del 7267, claim that the present petition needs to be dismissed.

14. I have given my thoughtful consideration to the rival contentions and gone through the precedents cited at the Bar.

15. Provision in question i.e. Order XI Rule 1 (5) CPC reads as under:

“1. Disclosure and discovery of documents— (5) The plaintiff shall not be allowed to rely on documents, which were in the plaintiff’s power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, 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.”

16. Documents sought to be placed on record are, admittedly, documents of impeccable and unquestionable nature. There is exchange of emails between the parties to the *lis* and, admittedly, as per the averments appearing in the plaint and written statement also, both the sides have referred to various emails, already.

17. The question in the aforesaid suit, primarily, seems to be based on the fact whether the time was essence of the contract or not and whether defendant was at any fault or not. Naturally, in such peculiar backdrop, the exchange of electronic mails may give a very good insight about the above issue and controversy.

18. Undeniably, all such e-mails were already in possession of the plaintiff. According to plaintiff, as already noted above, there were



around 500 e-mails which were exchanged between the parties and out of such voluminous exchange of e-mails, it, now, wants to place on record 75 e-mails in order to show that the stand taken by the defendant is incorrect.

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.

21. However, at the same time, the importance and significance of these e-mails cannot be undermined. This Court is also conscious of the fact that when the suit reaches at the stage of evidence, these emails can always be confronted during the cross-examination and since trial has yet not begun, this Court does not see any real prejudice, being caused to defendant by such belated filing.



22. In *Sudhir Kumar @ S. Baliyan* (supra), the situation was different as in that case the plaintiff had withdrawn his first suit and after a gap of ten months, he filed another suit and during the pendency of the aforesaid suit, it had moved an application seeking permission to place additional documents which also included certain invoices. The Hon'ble Supreme Court held that at the stage of granting any such leave to place on record additional documents, Court is not required to consider the genuineness of such documents, which needs to be ascertained during the trial only. It further declined the request of the plaintiff for some such documents, observing that there was sufficient time-gap between filing of the first suit and the second suit and, therefore, when the second suit was filed, plaintiff was having sufficient opportunity to file such documents with the plaint. It held that, therefore, there cannot be said to be case of *reasonable cause* for non-disclosure. In the case in hand, no such situation exists and immediately after filing of written statement, the application has been moved and, therefore, no real advantage can be dug out from the aforesaid judgment.

23. In *Anita Chhabra and Others* (supra), this Court had merely held that the negligence of counsel could not be equated with '*reasonable cause*' mentioned under Order XI Rule 1 (5) CPC. In the present case, it has not been pleaded that documents could not be placed on record on account of negligence of the counsel.

24. No doubt, timelines provided for any such suit, involving a commercial dispute, are rigid and binding and are required to be strictly



followed and to that extent, there cannot be any qualm with respect to observations appearing in *Casa 2 Stays Pvt. Ltd.* (supra). Fact, however, remains that even if there is belated filing of any such document, which was even under the control, possession and custody of the plaintiff, the permission can be granted, if the plaintiff is able to disclose a *reasonable cause*.

25. *Reasonable cause* is an elastic term and it cannot be put into any air-tight compartment.

26. In *Khurmi Associates (P) Ltd.* (supra), this Court, observing that issues were yet to be framed and the documents being sought to be placed on record were in support of the pleadings only, allowed such application. Reliance was placed upon *Hassad Food Company Q.S.C. and Another. Vs. Bank of India and Others: 2019 SCC OnLine Del 10647*, in which it was observed that phrase *reasonable cause* would require even a lower degree of proof as compared to good cause.

27. Allowing additional documents to be taken on record by noting that the suit was still at a nascent stage and the documents sought to be placed on record did not set up a new case, learned Division Bench of this Court in *Agva Healthcare Private Limited v. Agfa-Gevaert NV*, 2023 SCC OnLine Del 7914, has held as under:-

“xxx xxx xxx

17. We may also note that the present application had been filed when the suit is still at an initial stage and the issues are yet to be framed. The plea of the appellants that along with the plaint, the plaintiffs had filed appropriate declaration that all documents in



power, possession, control or custody of the plaintiffs has been disclosed etc. is misplaced. By placing on record the documents, the respondents are neither setting up a new case nor withdrawing any admission. By virtue of the additional documents, plaintiffs are not setting up a case contrary to what has been pleaded in the plaint.

xxx xxx xxx”

28. It was further noted, as under, in said case:-

“15.....Hon'ble Supreme Court in the case of Sugandhi (Dead) by Legal Representatives v. P. Rajkumar [(2020) 10 SCC 706] held as under:—

“8. Sub-rule (3), as quoted above, provides a second opportunity to the defendant to produce the documents which ought to have been produced in the court along with the written statement, with the leave of the court. The discretion conferred upon the court to grant such leave is to be exercised judiciously. While there is no straightjacket formula, this leave can be granted by the court on a good cause being shown by the defendant.

9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3).”

29. It also needs to be noted, right here, that after written statement was filed, the learned Trial Court itself had granted permission to the plaintiff to file replication. Instead of filing replication, plaintiff rather moved the aforesaid application seeking permission to place on record



additional documents and while disposing of such application, learned Trial Court gave one more opportunity to the plaintiff to file replication while also giving an opportunity to defendant to file trailing e-mails. In view of the aforesaid permission given to the defendant also, it cannot be said that there is any kind of prejudice to the defendant.

30. All such e-mails seem necessary for reaching fair decision of the case and also to appropriately rebut the stand taken by defendant in their written statement.

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.

32. Importantly, as noted above, procedure cannot be an obstacle in dispensation of justice.

33. Since the case is still at its infancy, no prejudice is going to be caused to defendant.

34. In *Shri Sunil Pasricha & Anr. vs Shri Shivam Gupta: 2025: DHC: 4334*, this court dismissed a petition seeking documents to be taken off record and while referring to extent of supervisory powers under Article 227 of Constitution of India, it was observed as under:-



“19. Reference be also made *Black Diamond Trackparts (P) Ltd. v. Black Diamond Motors (P) Ltd.*, (2022) 1 HCC (Del) 737 wherein this Court has observed as under:-

“5. Before proceeding further, it may be noted that the power under Article 227 of the Constitution of India being one of judicial superintendence cannot be exercised to upset conclusions, howsoever erroneous they may be, unless there was something grossly wrong or unjust in the impugned order shocking the court’s conscience or the conclusions were so perverse that it becomes absolutely necessary in the interest of justice for the court to interfere. The powers under Article 227 will be used sparingly. The Supreme Court has observed in *India Pipe Fitting Co. v. Fakhruddin M.A. Baker* (1977) 4 SCC 587 and in *Mohd. Yunus v. Mohd. Mustaqim* (1983) 4 SCC 566 that the supervisory jurisdiction conferred to the High Courts under Article 227 of the Constitution of India is limited to overseeing that an inferior court or tribunal functions within the limits of its authority and is not meant to correct an error, even if apparent on the face of the record. A mere wrong decision without anything more is not enough to attract this jurisdiction. Even in the judgment relied upon by the learned senior counsel for the respondent/plaintiff mentioned above, the Division Bench of this court has again cautioned that Article 227 of the Constitution of India be used sparingly in such suits which under the CPC are revisable and which remedy has been taken away by the Commercial Courts Act, 2015, in order to preserve the legislative intent and give effect to the purpose behind the Commercial Courts Act, of expeditious disposal of commercial suits.”

(emphasis supplied)

20. Such sentiments were echoed again in *Telecommunications Consultants India Ltd. v. Anil Bhasin*, 2021 SCC OnLine Del 5359 wherein the order of learned Trial Court, granting permission to plaintiff to place on record additional documents, was not interfered with by this Court.”

35. As an upshot of foregoing discussion, it clearly emerges out that the impugned order, which is mere discretionary in nature, does not



reflect any perversity, necessitating any kind of interference.

36. The petition is accordingly dismissed.

37. All the pending applications are also disposed of in the aforesaid terms.

(MANOJ JAIN)
JUDGE

MAY 26, 2025/ss/dr/js