

Cottage Industries Exposition Ltd vs Gopal Das Estates And Housing Pvt Ltd on 7 April, 2025

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 7th April, 2025

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CM(M) 2631/2024 & CM APPL. 30616/2024

COTTAGE INDUSTRIES EXPOSITION LTDPetitioner

Through: Mr. Anunaya Mehta, Mr. Inder
Adhikari and Mr. Vidhan Malik,
Advocates

versus

GOPAL DAS ESTATES AND HOUSING PVT LTDRespondent

Through: Mr. Ashok Chhabra, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 30616/2024 (exemption) Exemption allowed, subject to all just exceptions. CM(M) 2631/2024

1. Petitioner is defending a commercial suit.

2. Plaintiff filed a suit seeking recovery of arrears of rent of Rs. 1,89,71,580/-, along with pendente-lite and future interest.

3. The premises in question i.e. is commercial property situated at ground floor of Dr. Gopal Das Bhawan, 28 Barakhamba Road, New Delhi ad-measuring 7600 square feet which had been given on lease to the defendant.

4. The monthly rent was Rs. 11,93,200/- exclusive of electricity and water charges.

5. The suit is with respect to non-payment of admitted rent for the period w.e.f. April 2020.

6. Admittedly, plaintiff had already received back the possession of the tenanted premises before the institution of the suit as the same had been vacated by the defendant on 12.04.2021.

7. In their written statement, defendant did assert that there was seepage and poor drainage system in the tenanted premises which caused huge loss as its expensive goods got spoiled on account thereof and though it also claimed that he was entitled to refund of lease amount as the tenanted premises was not suitable enough for his needs, fact remains that no set off was prayed for. So much so, no counter-claim was set up by the defendant, either.

8. After completion of pleadings and framing of issues, the matter was posted for recording evidence of plaintiff and his witnesses.

9. After the plaintiff's evidence was over, the application in question was moved by defendant under Order XI Rule 1(10) CPC praying therein that defendant may be permitted to place on record certain photographs to show the condition of tenanted premises.

10. According to defendant i.e. petitioner herein, these photographs depict the structural defects, dripping of water from upper floors, water-logging in the showroom and the damage caused to the valuable carpets of the defendant and, therefore, these are relevant for deciding the controversy involved in the present suit. It also needs to be highlighted that it was averred in the aforesaid application that when preparing for the evidence of the defendant's witnesses, it came to the knowledge of the defendant that certain such photographs were available with one of the staff who was posted at the leased premises at the relevant time and it is in the aforesaid backdrop that the aforesaid application was moved.

11. The petitioner has taken exception to order dated 03.05.2024 whereby its such application has been dismissed.

12. This Court has gone through the order passed by learned Trial Court and the impugned order dated 03.05.2024 gives specific reasons as to why the aforesaid application had no merit. It records that according to defendant, these photographs were in custody of its one employee when the written statement had been filed but the entire application is silent as to why and under what circumstances, defendant-company could not file these photographs, along with the written statement. It also observed that there was strict mechanism, required to be followed by the parties in a commercial suit.

13. Learned Trial Court, while relying on *Nitin Gupta v. Texmaco Infrastructure & Holding Ltd.*, 2019 SCC OnLine Del 8367, went on to observe that for the reasons best known to the defendant, these photographs were even not put to the witnesses of the plaintiff during the cross-examination and, therefore, at such a belated stage, defendant-company cannot be permitted to take plaintiff by surprise by placing these photographs on record when the case is already at the stage of defendant's evidence.

14. The relevant rules of Order XI CPC, in context of a commercial dispute, reads as under: -

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(7) The defendant shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the written statement or with its counterclaim if any, including-

(a) the documents referred to and relied on by the defendant in the written statement;

(b) the documents relating to any matter in question in the proceeding in the power, possession, control or custody of the defendant, irrespective of whether the same is in support of or adverse to the defendant's defence;

(c) nothing in this Rule shall apply to documents produced by the defendants and relevant only-

(i) for the cross-examination of the plaintiff's witnesses,

(ii) in answer to any case set up by the plaintiff subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.

(8) The list of documents filed with the written statement or counterclaim shall specify whether the documents, in the power, possession, control or custody of the defendant, are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document being produced by the defendant, mode of execution, issuance or receipt and line of custody of each document.

(9) The written statement or counterclaim shall contain a declaration on oath made by the deponent that all documents in the power, possession, control or custody of the defendant, save and except for those set out in sub-rule (7)(c)(iii) pertaining to the facts and circumstances of the proceedings initiated by the plaintiff or in the counterclaim, have been disclosed and copies thereof annexed with the written statement or counterclaim and that the defendant does not have in its power, possession, control or custody, any other documents.

(10) Save and except for sub-rule (7)(c)(iii), defendant shall not be allowed to rely on documents, which were in the defendant's power, possession, control or custody and not disclosed along with the written statement or counterclaim, save and except by leave of Court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or counterclaim.

(11) The written statement or counterclaim shall set out details of documents in the power, possession, control or custody of the plaintiff, which the defendant wishes to rely upon and which have not been disclosed with the plaint, and call upon the plaintiff to produce the same.

(12) Duty to disclose documents, which have come to the notice of a party, shall continue till disposal of the suit.

15. Presently, we are concerned with Order XI Rule 1(10) CPC.

16. Though, the provision with respect to placing on record additional document by the plaintiff and defendant, may be similarly worded but fact remains that for placing on record any such document at a belated stage, any such party has to disclose „reasonable cause and has to give a reason as to why these documents could not be placed on record, at the earliest available opportunity. In case of a defendant, such defendant has to, thus, demonstrate as to why these documents were not filed or disclosed when the written statement or for that matter any counter-claim was filed.

17. Undoubtedly, these photographs may have some relevance with respect to the controversy in question as in the written statement it has been categorically averred that there was some seepage and drainage in the tenanted premises but fact remains that merely because of the fact that there was an averment to that effect, the Court cannot come to rescue of a litigant, who is in deep slumber.

18. Moreover, fact remains that mere photographs cannot served the requisite purpose.

19. Premises in question were vacated on 12.04.2021 and the written statement was submitted by the defendant in the month of April, 2022.

20. There is no reason, much less a plausible one, as to what prevented the defendant from placing on record these photographs along with the written statement or immediately thereafter. Mere contention that these photographs were with one of the witnesses of the defendant would not mean anything substantial in the present situation. Rather, if such contention is accepted and the Court starts putting its seal of affirmation over the same, the rigid timeline provided for any commercial suit would rather become redundant and the provision itself would lose its sheen and teeth. In *The Great Gatsby Club of India vs. Mahesh Prefab Pvt Ltd 2022:DHC:2675*, it is observed that in proceedings under the Commercial Courts Act, there is an absolute statutory proscription on a defendant being allowed to rely on any documents which were in its power, possession or custody and not disclosed along with the written statement or counter claim, except by leave of the court. The Court is also statutorily proscribed, by Order XI Rule 1(10), from granting leave except where reasonable cause for not filing of the documents along with the written statement or counter claim has been made out. It also supplemented that the court cannot dilute the rigour of the said provisions on any sympathetic or other considerations and it is presumed that these considerations were in the mind of the legislature when they enacted the Commercial Courts Act, finally observing that there can be no charity beyond the law.

21. The Court has gone through the aforesaid judgments which have been cited at the Bar from the side of the petitioner and, unfortunately, none of these stands applicable in the present scenario.

22. Learned counsel for petitioner places reliance on *Hassad Food Company Q.S.C. vs. Bank of India 2019 SCC OnLine Del 10647*. However, therein it was the attachments of the already filed e-mails which were inadvertently not filed. The same is not the scenario in the present petition as despite there being an averment to the seepage in question, the petitioner made no efforts to immediately place on record any such material or evidence with respect to the same. Reliance on *Mohd. Islamuddin v. S.S. Kapoor, 2022 SCC OnLine Del 3608* is misplaced as said decision refers to delay caused due COVID-19 pandemic which is not the case here. Further reference is made to *Sudhir*

Kumar v. Vinay Kumar G.B., (2021) 13 SCC 71 by learned counsel for petitioner. However, therein Hon ble Supreme Court had disallowed the Trial Court from going into the question of genuineness of the documents which the party intended to place on record under Order XI Rule 1.

23. Learned counsel for respondent places reliance upon Bank of Baroda v. Gujarat Cables & Enamelled Products (P) Ltd., 2022 SCC OnLine Bom 4740 wherein sheer "inadvertence" or "oversight" did not constitute „reasonable cause for grant of leave under Order XI. He also relies on TTK Prestige Ltd. v. Baghla Sanitaryware (P) Ltd., 2024 SCC OnLine Del 882 where application under Order XI Rule 1(5) CPC for placing additional documents on record was dismissed.

24. It needs to be highlighted that there is no straightjacket formula as to when any such application under Order XI Rule 1 is to be allowed and when dismissed as it rather depends on the facts and circumstances of each case.

25. Undoubtedly, the approach of the Court has to be thus balanced one, while appreciating the factual matrix. Merely because phrase „reasonable cause requires a lower degree of proof vis-à-vis „good cause , it would not, ipso facto, mean and indicate that any such defendant can walk in at any stage of the case and can be permitted to file additional documents.

26. As already noticed above, the defendant, for the reasons best known to him, has not taken any plea of set off. It has not come up with any counter-claim. Moreover, when the witnesses of the plaintiff were in the witness-box, no necessity was felt to confront such witnesses with the aforesaid photographs. In such a peculiar backdrop, this Court does not find any reason to interfere with the impugned order which does not, even otherwise, gives even a slightest hint of any illegality and perversity.

27. Since case in hand is commercial in nature it would be useful to refer to Black Diamond Trackparts Pvt. Ltd. v. Black Diamond Motors Pvt. Ltd., 2021 SCC OnLine Del 3946 which delineates the scope of appreciation of such matters in a petition under Article 227 of Constitution of India by observing that such jurisdiction has to be exercised very sparingly and that such exercise of jurisdiction must not negate the legislative intent and purpose behind the Commercial Courts Act and thus does not come in the way of expeditious disposal of commercial suits.

28. This Court is also conscious of the limited scope of appreciation while considering any petition filed under Article 227 of the Constitution of India. As per Puri Investments Versus Young Friends and Co. and Others: 2022 SCC OnLine SC 283, the duty of the supervisory Court is to interdict if it finds that the findings are perverse i.e. (i) Erroneous on account of non- consideration of material evidence, or (ii) Being conclusions which are contrary to the evidence, or (iii) Based on inferences that are impermissible in law. Nothing of such kind is found to be here.

29. In view of the above, this Court does not find any merit in the present petition. Same is accordingly dismissed.

30. It is clarified that the observations made hereinabove are in the context of permission to place on record additional documents and shall not influence or prejudice the mind of the Court at the time of final disposal.

(MANOJ JAIN) JUDGE APRIL 7, 2025 /dr/pb