

(2024) 08 DEL CK 0032

Delhi High Court

Case No: Civil Suit (COMM) No. 166 Of 2017

Iffco Tokio General Insurance
Co.Ltd. And Another

APPELLANT

Vs

Inder Travels Pvt.Ltd. & Ors

RESPONDENT

Date of Decision: Aug. 1, 2024

Acts Referred:

- Code of Civil Procedure, 1908 - Section 151, Order Rule 1, Order 11 Rule 1(1)(c)(ii), Order Rule 1(5)

Hon'ble Judges: Navin Chawla, J

Bench: Single Bench

Advocate: Saurav Agrawal, Manvi Adlakha, Debarshi Dutta, Mrinal Ojha, Anusha Sinha, Ajay Sharma, Vinay Gupta, Ram Manohar Singh

Final Decision: Allowed

Judgement

Navin Chawla, J

I.A. 14674/2023

1. This application has been filed by the plaintiffs under Order XI Rule 1(5) read with Section 151 of the Code of Civil Procedure, 1908, as amended by the Commercial Courts Act, 2015, (in short, 'CPC'), seeking leave of this Court to file additional documents along with the evidence by way of affidavit of Mr. Rodney D'Cruz (PW1) and Mr. Yogesh Kumar (PW2).

Brief Facts

2. The above suit was filed by the Plaintiffs on 25.01.2017, praying for a decree of a sum of Rs.22,47,00,000/- against the defendants.

3. It is the case of the plaintiffs that the defendants had purchased airline tickets and availed other services on credit, as recorded in the BSP Agent Billing Statement and Analysis (in short, 'BSP Statement'), by virtue of being an accredited agent of the plaintiff No.2, and sold the same to the passengers/customers, but did not remit those sums to the plaintiff No.2 for onward payment to the member airlines.

4. The defendants in their Written Statement filed on 13.04.2017, have denied their liability inter alia also contending that the BSP Statement cannot be relied upon as the defendants did not have access to the BSP link as such access to the defendants had been disconnected by the plaintiff No.2.

5. The plaintiffs filed a Replication on 26.09.2017, producing therewith an additional document.

6. Thereafter, issues were framed by this Court vide its Order dated 09.01.2019.

7. The plaintiffs then filed the evidence by way of affidavit of PW1, on 03.03.2020, annexing therewith certain additional documents. The plaintiffs also filed the evidence by way of affidavit of PW2, on 27.07.2022, again annexing therewith certain additional documents.

8. While conceding to some of the documents to be taken on record, the defendants opposed the filing of the remaining additional documents by the plaintiffs without seeking prior leave of the Court. Faced with this objection, the plaintiffs have filed the present application before this Court, on or about 01.08.2023, praying for leave of this Court to place on record the additional documents.

9. Before dealing further with this application, it would first be appropriate to first list out the additional documents that are now sought to be placed on record by the plaintiffs, as under:

- i. Ex.PW1/1 - Power of Attorney dated 26th May 2017 issued in favour of Rodney D'Cruz
- ii. Ex.PW1/3 - Act to Incorporate the International Air Transport Association, Statutes of Canada, 1945, Chapter 51
- iii. Ex.PW1/4 - Printout of the relevant 3 screenshots of the web page bsplink.iata.org
- iv. Ex.PW1/5 - Printout of the BSP Reporting and Remittance Calendar for the year 2014
- v. Ex.PW1/6 - Printout of Resolution 818g, Resolution 866, and Resolution 820e forming part of the Travel Agent's Handbook

- vi. Ex.PWI/7 - Printout of the defendants' request dated 24th March, 2014 for review of IATA'S notice of default and the decision of the Travel Agency Commissioner dated 16th and 28th April, 2014
- vii. Ex.PW2/1 - Copy of Power of Attorney dated 10 March 2022 issued in favour of Mr.Yogesh Kumar
- viii. Ex.PW2/6 - plaintiffs' advocate's letter dated 29th June 2020 to the defendants' advocate
- ix. Ex.PW2/7 - plaintiffs' advocate's letter dated 21st July 2022 to the defendants' advocate.

Submissions of the learned counsel for the Plaintiffs

10. The learned counsel for the plaintiffs submits that as far as Ex.PW1/1 is concerned, the same is merely a document under which the PW1 is authorised by the plaintiff No.2 as its Attorney to depose in the case. Ex.PW1/3 is a Statute of Canada incorporating the plaintiff No. 2. Ex.PW1/4 is the relevant screenshots of the BSP webpage that would show the BSP link and the manner of its operation; it is only to clarify how the BSP Statement is generated.

11. For Ex.PW1/6, he submits that these are mere clauses of the Travel Agent's Handbook, which is annexed and referred to in the Passenger Sales Agency Agreements between the plaintiff No.2 and the defendants. He submits that certain relevant clauses of this Handbook have been annexed as a document, instead of mentioning them in the affidavit of the PW1 itself.

12. The learned counsel for the plaintiffs further submits that as far as Ex.PW1/5 is concerned, he does not press for the said document to be taken on record at this stage.

13. As far as Ex.PW1/7 is concerned, he does not press this application for the same at this stage, and seeks liberty to confront the witness of the defendants with the same, if so required, when the defendants lead their evidence.

14. For Ex.PW2/1, he submits that, again, it is the authority of PW2 to depose in the case. Ex.PW2/6 and Ex.PW2/7 are the documents which came into being only post the filing of the Replication, leave alone the suit, and therefore, the embargo as contained in Order XI Rule 1 of the CPC shall not apply.

15. The learned counsel for the plaintiffs, placing reliance on the judgment of the Supreme Court in **Sugandhi (Dead) & Anr. v. P. Rajkumar**, (2020) 10 SCC 706, submits that a new case is not sought to be set up by filing of these additional documents mentioned hereinabove, and not taking them on record would cause a serious

prejudice to the plaintiffs and defeat the ends of the justice.

16. Relying upon the judgment of this Court in **Hassad Food Company Q.S.C. & Anr. v. Bank of India & Ors.**, 2019 SCC OnLine Del 10647, he submits that Order XI Rule 1(5) of the CPC empowers the Court to take on record additional documents not filed with the Plaintiff, where the plaintiff is able to show "a reasonable cause" for not filing the same at an earlier stage. He submits that the term "reasonable cause" has to be read liberally and not as stringently as the term "sufficient cause". He submits that even otherwise, the documents now sought to be produced are in answer to the case set up by the defendants in their Written Statement. He submits that in such a scenario, Order XI Rule 1(1)(c)(ii) of the CPC shall be applicable.

Submissions of the learned counsel for the Defendants

17. On the other hand, the learned counsel for the defendants submits that though the plaintiffs filed their Replication in September, 2017, they did not choose to file these documents along with the same. Issues in the Suit were framed way back on 09.01.2019. He submits that the plaintiffs sought to clandestinely introduce these documents along with the affidavit of evidence of their witnesses, without seeking any leave of this Court. It is only when the defendants objected to the filing of these documents, that the plaintiffs, as an afterthought, have filed the present application seeking leave of this Court to place on record these additional documents. Placing reliance on the judgment of the Supreme Court in Sudhir Kumar @ S. Baliyan v. Vinay Kumar G.B., (2021) 13 SCC 71, he submits that where the documents were in the plaintiff's power, possession, control or custody, and yet were not disclosed in the Plaintiff, the rigour of establishing a reasonable cause for such non-disclosure has to be met by the plaintiffs, and the documents cannot be taken on record at the mere asking or prayer of the plaintiffs.

18. He submits that in the present case, the documents that are now sought to be placed on record, were present with the plaintiffs at least at the time of filing of their Replication, and the plaintiffs having chosen not to file the same then, cannot now be allowed to reopen the trial by placing reliance upon such documents. In support, he also places reliance on the judgments of this Court in **CEC-CICI JV & Ors. v. Oriental Insurance Co. Ltd.** Neutral Citation No. 2023:DHC:3340; **Nitin Gupta v. Texmaco Infrastructure & Holding Limited** 2019 SCC OnLine Del 8367; and, **Zee Entertainment Enterprises Ltd v. Saregama India Ltd.**, 2019 SCC OnLine Del 10215; and of the Bombay High Court in **Khanna Rayon Industries Pvt. Ltd. v. Swastik Associates & Ors.**, 2023 SCC OnLine Bom 1372.

19. He submits that as far as Ex.PW1/6 is concerned, though the copy of the Passenger Sales Agency Agreements between the plaintiff No.2 and the defendant No.1 were filed along with the Plaintiff, the Handbook was not forming part thereof. The defendants

denied the existence of the Handbook itself in their Written Statement. In spite of the same, a copy of the Handbook was not filed along with the Replication and, therefore, now reliance on the clauses of the same cannot be allowed.

20. He submits that Order XI Rule 1(1)(c)(ii) of the CPC also cannot come to the aid of the plaintiffs inasmuch as the plaintiffs have availed of and filed their Replication along with additional documents, and therefore, the opportunity under Order XI Rule 1(1)(c)(ii) of the CPC was availed of by the plaintiffs when they filed their Replication. Having chosen not to file these documents with the replication, the plaintiffs now cannot be allowed to rely upon the said provision to file these additional documents, which they ought to have filed at an earlier stage.

Findings and Analysis

21. I have considered the submissions made by the learned counsels for the parties.

22. This being a suit raising a commercial dispute, provisions of Order XI, as applicable to a commercial suit, would be relevant. Order XI Rule 1(1) of the CPC states that the plaintiff shall file a list of all documents and photocopies of all documents in its power, possession, control or custody, pertaining to the suit, including documents referred to and relied upon by the plaintiff in the Plaintiff, irrespective of whether the same is in support of or adverse to the plaintiff's case. Order XI Rule 1(3) of the CPC further provides that the plaintiff shall have to give a declaration on oath that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the case, have been disclosed and copies thereof annexed with the Plaintiff, and that the plaintiff does not have any other document in its power, possession, control or custody. The said Rule, therefore, emphasises the duty of the plaintiff to disclose all documents in its power, possession, control or custody along with the Plaintiff. Order XI Rule 1(5) of the CPC further states that the plaintiff shall not be allowed to rely on those documents which were in plaintiff's power, possession, control or custody and were not disclosed along with the Plaintiff, save and except by the leave of the Court. It states that such leave shall be granted only upon the plaintiff establishing a reasonable cause for non-disclosure along with the Plaintiff. Order XI Rule 1(1)(c) of the CPC, however, states that the above Rule shall not apply to those documents produced by the plaintiff, which are relevant only for the cross-examination of the defendant's witness, or in answer to any case set up by the defendant subsequent to the filing of the Plaintiff, or handed over to the witness merely to refresh his memory.

23. Provisions of Order XI Rule 1(1), Rule 1(3) and Rule 1(5) of the CPC are reproduced hereinunder:-

“1. Disclosure and discovery of documents.-

(1) Plaintiff 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 plaint, including:-

- (a) documents referred to and relied on by the plaintiff in the plaint;**
- (b) documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the plaint, irrespective of whether the same is in support of or adverse to the plaintiff's case;**
- (c) nothing in this rule shall apply to documents produced by plaintiffs and relevant only--**
 - (i) for the cross-examination of the defendant's witnesses, or**
 - (ii) in answer to any case set-up by the defendant subsequent to the filing of the plaint, or**
 - (iii) handed over to a witness merely to refresh his memory.**

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(3) The plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody.

Explanation.--A declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix.

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(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."

24. Explaining the mandate of the above Rules, in **Sudhir Kumar @ S. Baliyan** (supra), the Supreme Court held that for filing documents at a later stage, the plaintiff has to satisfy and establish a reasonable cause for non-disclosure thereof along with the Plaintiff. However, the requirement of establishing a reasonable cause for non-disclosure of the documents along with the Plaintiff 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 the Plaintiff was filed. It was further held that at the stage of granting leave to place on record additional documents, the Court is not required to consider the genuineness of the documents/additional documents; the stage at which the genuineness of the documents is to be considered, is during the trial.

25. In **CEC-CICI JV & Ors.** (supra), it was held that a party cannot place additional documents on record as a matter of right. The plaintiff would have to show reasonable cause for not filing the same along with the Plaintiff.

26. In **Nitin Gupta** (supra), this Court emphasized that Order XI Rule 1 of the CPC, as applicable to commercial suits, has brought about a radical change. The late filing of documents thereunder is permitted by applying the test of reasonable cause for non-disclosure of the documents at the stage provided for filing thereof. The plaintiff is now to satisfy the Court as to why the document sought to be filed later was not filed earlier along with the Plaintiff. The Court cannot allow additional documents to be filed at a later date without any reasonable cause being established for non-disclosure thereof along with the Plaintiff.

27. In **Zee Entertainment Enterprises Ltd** (supra), this Court reiterated that grant of leave by the Court to file additional documents is not a ministerial function, and the Court has to be satisfied qua the reason for non-production of the documents along with the Plaintiff. The same places no further restriction on the power of the Court to grant such leave, except that the plaintiff has to establish a reasonable cause for non-disclosure of the document along with the Plaintiff. The use of the word "establishing" conveys that there should be something more than a vague explanation for non-production of the documents along with the Plaintiff.

28. The same principle has been reiterated by the Bombay High Court in *Khanna Rayon Industries Pvt. Ltd.* (supra).

29. In *Hassad Food Company Q.S.C. & Anr.* (supra), this Court, while reiterating, that the plaintiff shall not be allowed to rely on the documents, which were in the plaintiff's power, possession, control or custody, and were not disclosed along with the Plaintiff, or within the extended period, save and except by leave of the Court, which leave can be granted only if the plaintiff establishes "reasonable cause" for non-disclosure along with the Plaintiff, also emphasised that the language used in Order XI Rule 1(5) of the CPC is that the plaintiff is required to show a "reasonable cause" and not a "sufficient cause". It further held that Order XI Rule 1(5) uses the phrase "reasonable cause", which would require even a lower degree of proof as compared to "good cause", which in turn requires a lower degree of proof as compared to "sufficient cause".

30. In Sugandhi (Dead) By Legal Representatives & Anr. (supra), the Supreme Court emphasised that procedure being the handmaid of justice, procedural and technical hurdles should not be allowed to come in the way of the Court while doing substantial justice; the Courts must lean towards doing substantial justice rather than relying upon procedural and technical violations.

31. Applying the above test to the facts of the present case, since PW1/1 is the Power of Attorney in favour of PW1 from the plaintiff No.2 and PW1 is not the signatory to the Plaintiff, therefore, the time for showing his authorisation to depose on behalf of the plaintiffs would arise when he files his evidence by way of affidavit and makes himself available for recording of his evidence. It cannot, therefore, be said to be an additional document filed at a later stage, drawing the rigours of Order XI Rule 1(5) of the CPC.

32. PW1/3 is a copy of the Act to incorporate the plaintiff No.2. Being a Statute, again, the rigours of Order XI Rule 1(5) of the CPC cannot apply to the same.

33. PW1/4, as explained by the PW1 in his evidence by way of affidavit, are the relevant screenshots of the webpage- bsplink.iata.org. They are being filed by the witness merely to show the BSP link and the manner of its operation and to clarify how the BSP Statement is generated. The learned counsel for the plaintiffs has explained that the necessity of producing the said documents has arisen because of the denial of the defendants to having access to the bsplink of the plaintiff No.2 in their Written Statement. As noted hereinabove, Order XI Rule 1(1)(c)(ii) of the CPC allows the plaintiff to produce at a later stage, documents in answer to any case set up by the defendant subsequent to the filing of the Plaintiff. Though the learned counsel for the defendants is correct in his submission that the plaintiffs, having filed a Replication to the Written Statement, could have availed of the said leave and filed these documents along with the Replication, while considering whether the plaintiffs have established a "reasonable cause" for non-disclosure thereof along with the Plaintiff, on the touchstone of the principles laid down by this Court in Hassad Food Company Q.S.C. & Anr. (supra), in my view, the plaintiffs have done so.

34. PW1/6 are the printouts of certain Resolution (Clauses) of the Travel Agent's Handbook. The learned counsel for the plaintiffs has explained that the Travel Agent's Handbook has been referred to in the Passenger Sales Agency Agreements between plaintiff No.2 and the defendant No.1. Copy of the Agreements have been filed along with the Plaintiff, however, the defendants have denied the Travel Agent's Handbook in their Written Statement. The learned counsel for the defendants has submitted that the defendants do not admit to the existence of the Travel Agent's Handbook.

35. As noted hereinabove, in Sudhir Kumar @ S. Baliyan (supra), the Supreme Court has emphasised that at the stage of granting leave to place on record additional documents, the Court is not required to consider the genuineness of the

documents/additional documents; the stage thereof shall be during the trial. This issue would, therefore, have to be left to be decided at the trial. For the present stage, as the plaintiffs are merely seeking to refer to certain clauses of the alleged Travel Agent's Handbook, which could even have been referred by the witness without filing a copy of the documents thereof, in my view, leave deserves to be granted to the plaintiffs to file the same in the form of additional documents.

36. PW2/6 and PW2/7 are, in any case, the documents, which have come into being post filing of not only the Plaintiff but also the Replication. In terms of the judgment in Sudhir Kumar @ S. Baliyan (supra), leave should be granted to the plaintiffs to place these documents on record.

Conclusion:

37. In view of the above, the application is allowed in part, and the documents sought to be placed on record by the plaintiffs, that are, Ex.PW1/1, Ex.PW1/3, Ex.PW1/4, Ex.PW1/6, Ex.PW2/1, Ex.PW2/6 and Ex.PW2/7, are taken on record.

38. For Ex.PW1/7, as the learned counsel for the plaintiffs has not pressed for the said document to be taken on record at this stage, the same is not taken on record. Liberty is however, reserved for the plaintiffs to confront the witness of the defendants with the same, if permissible in law. It is clarified that this court has not expressed any opinion on whether the plaintiffs can confront the witness of the defendants with the said document.

39. There shall be no order as to costs.

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40. List before the learned Joint Registrar (Judicial) on 16th October, 2024 for further proceedings.