

Saffron Developers Pvt. Ltd Vs Premchand Resorts And Apartments) And Others

Court: Bombay High Court

Date of Decision: Feb. 3, 2025

Acts Referred: Constitution of India, 1950 " Article 227

Code of Civil Procedure, 1908 " Order 7 Rule 14, Order 7 Rule 14(3), Order 11 Rule 1, Order 11 Rule 1(1), Order 11 Rule 1(3), Order 11 Rule 1(4), Order 11 Rule (1)(5), Order 11 Rule 5, Order 11 Rule 10

Commercial Courts Act, 2015 " Section 16

Hon'ble Judges: Abhay Ahuja, J

Bench: Single Bench

Advocate: Aseem Naphade, Sanjay Maji, Bijal Gandhi, D M Legal Associates, Vikramjeet Garewal, Siraj Menon, Avesh Ganja, Sandesh Panchal, Siraj Menon

Final Decision: Allowed

Judgement

Abhay Ahuja, J.

1. This Interim Application seeks leave of this Court to produce certain documents consisting of balance sheets of the Defendant no.1 and email

correspondence exchanged between the Plaintiff and the Defendant no.1 and thereafter to permit the Applicant to file further affidavit in lieu of

examination-in-chief or permit the Applicant to conduct further examination-in-chief to admit in evidence the documents sought to be produced

through this application.

2. Mr.Aseem Naphade, learned Counsel, appearing for the Applicant has submitted that this application has been filed under Order XI Rule 5 of the

Code of Civil Procedure, 1908 ("CPC") as amended by the Commercial Courts Act, 2015. Mr.Naphade has submitted that Rule 1 of the said

Order provides that the Plaintiff shall file a list of documents and photocopies of all documents in its power, possession, control or custody pertaining to

the Suit along with the plaint. Mr.Naphade submits that, that is the rule, however, exception to the said rule is provided in Rule 5 where with the leave

of the Court, the documents which were in plaintiff's power, possession, control or custody and not disclosed along with the plaint or within the

extended period set out in the Rules shall be allowed, provided the Plaintiff establishes reasonable cause for non-disclosure along with the plaint.

Mr.Naphade has submitted that the documents consist of balance sheets of the Defendants for the year ending 31st March 2014, 31st March 2015

and 31st March 2016 as well as 31st March 2017. Mr.Naphade submits that the Plaintiff has referred to the balance sheets in the plaint wherein the

Defendant no.1 has admitted the debt payable to the Plaintiff.

However, it is only in the balance sheet for the year ending 31st March 2017 that the Defendant no.1 retracted from the aforesaid admission of

liability. As far as the emails are concerned, Mr.Naphade submits that the affidavit of evidence of the Plaintiff's witness refers to the emails dated

28th, November 2015, 28th, January 2016, 5th, February 2016 and 11th February 2016 which have been exchanged between the Plaintiff and

the Defendants and they relate to the matters in controversy. The said emails show that the Defendants have been reneging from their obligation to

pay the monies due and payable to the Plaintiff and that these emails have also been referred to in the affidavit of evidence of the Plaintiff's witness.

Mr.Naphade submits that the balance sheets and the e-mail correspondence constitute important evidence to decide the matter in

controversy. It is submitted that it is not that these balance sheets and e-mail correspondence have not been disclosed but they were just not annexed

or exhibited.

3. Drawing this Court's attention to paragraph 8 of the rejoinder, Mr.Naphade would further submit that this is not just a case of sheer

inadvertence but lack of co-ordination. Mr.Naphade would submit that the aforesaid documents were of utmost importance to determine the real issue

between the parties to the Suit and the balance sheets and emails will assist the Court in ascertaining the truth in the matter. That, the Plaintiff has

filed the present Summary Suit in respect of an admitted liability which can be seen from the balance sheet of the Defendant no.1. It is submitted that

the Plaintiff inadvertently could not produce the said documents with the plaint and affidavit of evidence as the plaint and affidavit of evidence has

been signed by the Plaintiff's witness Mr.Rahul Gupta, who is the director of the Plaintiff and has been ordinarily residing in Dubai since 2013 for

his business whereas the Advocates of the Plaintiff are in Mumbai. Therefore, there was some lack of co-ordination and as a result, although the

documents are referred to in the plaint and affidavit of evidence, were not annexed. It was only on the visit of the Plaintiff's witness to India for

cross-examination that the Plaintiff realized the inadvertent non-production of the said documents and immediately filed the present application for the

production of documents and for filing of further affidavit in lieu of examination-in-chief. It is submitted that the relevance of the documents has been

evidently established by the Plaintiff and as the cross-examination in the present Suit has not yet commenced, the Plaintiff ought to be permitted to

produce the said documents and file a further affidavit in lieu of examination-in-chief which will also allow the Defendants to raise questions regarding

the said documents to the Plaintiff's witness. Mr. Naphade submits that neither the existence nor the contents or the relevance have been disputed

by the Defendant no.1. Mr. Naphade submits that even the Defendant no.1 has referred to these documents in its reply as crucial documents.

Mr. Naphade submits that, therefore, this Court allow the application as the Defendants would always get an opportunity to cross-examine the

Plaintiff's witness on the same.

4. It is submitted that if the application is allowed, no prejudice or harm would be caused to the Defendants as the Defendants were always aware of

the said documents as they originated from the Defendants themselves and are not new or additional documents but were referred to and mentioned

in the plaint as well as in the affidavit in lieu of examination-in-chief of the plaintiff's witness no.1.

5. Mr. Naphade relies upon the decision of this Court in the case of Meera w/o. Vijay Mukhedkar vs. Laxminarayan s/o. Venkobasa Damam

(died) through his LRs Shriniwas s/o. Laxminarayan Damam and Others 2018(5) Mh.L.J. 809.

6. Mr. Naphade submits that, therefore, this Court allow the application and this Court may subject the Applicant to any reasonable terms.

7. On the other hand, Mr. Garewal, learned Counsel appearing for the Defendants has submitted that under Order XI Rule 1 sub-rule (1) of the CPC,

as amended by the Commercial Courts Act of 2015, the Plaintiff has to disclose every document in possession, power, control or custody which the

Plaintiff intends to rely upon or refer to in the plaint including documents that support or weaken its case. Mr. Garewal submits that this disclosure must

be comprehensive and complete at the time of filing the plaint. It is submitted that the Plaintiff despite referencing the additional documents in the

plaint and the affidavit of examination-in-chief has failed and neglected to annex the additional documents when the Suit was filed on 19th December

2018 and even when the affidavit of examination-in-chief was filed on 5th July 2019. It is submitted that by neglecting to annex these documents the

Plaintiff has violated the disclosure obligations under Order XI Rule 1 sub-rule (1) of the CPC.

8. Mr. Garewal draws this Court's attention to a brief summary of dates submitting that despite the various stages from the filing of the plaint on

19th December 2018, the filing of the affidavit of examination-in-chief of the Plaintiff's witness, marking of documents by this Court, preliminary

meeting before the Court Commissioner and the date fixed for cross-examination on 8th October 2024 to 10th October 2024, the Plaintiff had multiple

opportunities to rectify this but the Plaintiff chose to remain silent and then claiming sheer inadvertence after years of delay is a vague excuse, which

cannot be permitted under Order XI anymore. Mr.Garewal would submit that it is clear from the aforesaid timelines that the Plaintiff has been

negligent in pursuing the Commercial Suit and is not seeking to reply on sheer inadvertence to bring on record additional documents without any

plausible cause and or sufficient reasons for such delay. Relying upon the decision of this Court in the case of Bank of Baroda vs. Gujarat Cables and

Enamelled Products Private Limited 2023(2) Mh.L.J. 345 Mr.Garewal would submit that the said decision has clearly held that sheer inadvertence or

oversight would not furnish or constitute a reasonable cause for granting leave under Rule 10 of Order XI of the CPC. Mr.Garewal submits that

although the said decision refers to Order XI Rule 10 and this Court at the moment is concerned with Order XI Rule 5, the said interpretation would

squarely apply to Rule 5 as well in as much as Rule 5 relates to the filing of additional documents by the Plaintiff and Rule 10 relates to filing of

additional documents by the Defendants and the two Rules are similar and rather pari materia.

9. With respect to the decision in the case of Meera w/o. Vijay Mukhedkar vs. Laxminarayan s/o. Venkobasa Damam (died) through his LRs

Shriniwas s/o. Laxminarayan Damam and Others (supra), Mr.Garewal submits that the said decision is wholly inapplicable to the facts of this case

as the said decision was with reference to Order VII Rule 14 of the CPC and not with reference to Order XI Rule 1 of the CPC. In support

Mr.Garewal relies upon the decision of the Hon'ble Supreme Court in the case of Sudhir Kumar alias S. Baliyan vs. Vinay Kumar G.B. (2021) 13

Supreme Court Cases 71 where it has been held that Order XI Rule 1 is applicable to the Commercial Suits by which the CPC has been amended

with respect to the Suit before the Commercial Court and in view of Section 16 of the Commercial Courts Act, Order VII Rule 14(3) of the CPC shall

have no application at all.

10. Mr.Garewal submits that as per the explanation under Order XI Rule 1(3), a declaration on oath under the sub-rule shall be contained in the

Statement of Truth as set out in the Appendix. It is submitted that the declaration on oath shall be part of the plaint. The Plaintiff has to declare on

oath that all documents in its/his power, possession, control or custody, pertaining to the facts and circumstances of the proceedings, initiated by him/it

have been disclosed and copies thereof annexed with the plaint and that he does not have any other documents in his power, possession, control or

custody. It is submitted that it is mandated by Order XI Rule 1 for the Plaintiff to disclose and produce all the documents in his power, possession

control or custody, pertaining to the facts and circumstances of the proceedings. Mr.Garewal submits that the additional documents can however be

permitted to be brought on record with the leave of the Court as provided in Order XI Rule 1(4). Order XI Rule 1 (4) provides that in case of urgent

filings, the Plaintiff may seek to rely on additional documents as part of the above declaration on oath [as provided under Order XI Rule 1(3)] and

subject to grant of such leave by court, the Plaintiff shall file such additional documents in Court within thirty days of the filing of the Suit along with a

declaration on oath that the Plaintiff has produced all documents in its power possession control or custody, pertaining to the facts and circumstances

of the proceedings initiated by the Plaintiff and that the Plaintiff does not have any other documents in its power possession control or custody.

Mr.Garewal submits that the Plaintiff has already furnished a Statement of Truth as discussed above and that for the Plaintiff to now seek to produce

the documents which were referred to in the plaint as well as in the affidavit in lieu of examination-in-chief would falsify the statement made in the

Statement of Truth annexed to the plaint.

11. Mr.Garewal, therefore, submits that since the Plaintiff has not been able to establish reasonable cause for non-disclosure of the documents along

with the plaint, this Court dismiss the application with costs.

12. I have heard the learned counsel and considered the rival contentions.

13. Before proceeding further it would be apposite to quote Order XI as under:

“ORDER XI

DISCLOSURE, DISCOVERY AND INSPECTION OF DOCUMENTS IN SUITS BEFORE THE COMMERCIAL DIVISION OF A HIGH COURT OR A COMMERCIAL

COURT

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 to

(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.

(2) The list of documents filed with the plaint shall specify whether the documents in the power, possession, control or custody of the plaintiff are originals, office

copies or photocopies and the list shall also set out in brief, details of parties to each document, mode of execution, issuance or receipt and line of custody of each

document.

(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.

(4) In case of urgent filings, the plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath and subject to grant of such

leave by Court, the plaintiff shall file such additional documents in Court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff

has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and

that the plaintiff does not have any other documents, in its power, possession, control or custody.

(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.

(6) The plaint shall set out details of documents, which the plaintiff believes to be in the power, possession, control or custody of the defendant and which the

plaintiff wishes to rely upon and seek leave for production thereof by the said defendant.

(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.

(emphasis supplied)

14. As observed in the decision of the Hon'ble Supreme Court in the case of Sudhir Kumar alias S. Baliyan vs. Vinay Kumar G.B.(supra), it is

clear that in view of Order XI Rule 1 as applicable to Commercial Suits by which the CPC has been amended with respect to Suits before the

Commercial Court and in view of Section 16 of the Commercial Courts Act, Order VII Rule 14(3) of the CPC will have no application at all to

Commercial Suits. Therefore, the decision of this court in the case of Meera w/o. Vijay Mukhedkar vs. Laxminarayan s/o. Venkobasa Damam

(died) through his LRs Shriniwas s/o. Laxminarayan Damam and Others (supra) may not be applicable as the said decision has been rendered in

the context of Order VII Rule 14. However it cannot be denied that although the Plaintiff is required to produce all the original documents with the

plaint but that does not prevent the Court to accept original documents at any stage if reasonable cause is shown. It is well within the scope of

exercise of powers of a Commercial Court to allow production if reasonable cause is established. Unless a case of serious prejudice or miscarriage of

justice being caused to the other side is made out, normally the Court is expected to entertain such request if proper explanation is put forth by the

party seeking such production. The provisions of the CPC are procedural in nature and designed to facilitate justice and not to penalize or punish

someone. In the case of M/s. R.N.Jadi and Brothers and Others vs. Subhashchandra AIR 2007 SC 2571, the Supreme Court has observed that

procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the

mistress, a lubricant, not a resistant in the administration of justice. In my view, these principles are equally applicable to the provisions of the CPC as

amended by the Commercial Courts Act, no doubt keeping in mind the object of the Commercial Courts Act of early and speedy justice and the

consequent strict construction of the provisions of the Commercial Courts Act as noted in the case of Ambalal Sarabhai Enterprises Limited vs.

K.S.Infraspac and Another (2020) 12 SCC 585, by the Hon'ble Supreme Court.

15. Order XI Rule 1 of the CPC as applicable to the Commercial Suits mandates that the Plaintiff is to file a list of all documents, photocopies of all

documents in its power, possession, control or custody pertaining to the suit along with the plaint and the procedure provided under Order XI Rule 1 is

required to be followed by the Plaintiff and the Defendant when the Suit is a Commercial Suit. Nevertheless Rule 1 sub-rule 5 of Order XI while

mandating that 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 the plaint or within the extended period, permits the same with the leave of the Court to be granted only upon the Plaintiff

establishing reasonable cause for non-disclosure. As has been observed in the case of Bank of Baroda vs. Gujarat Cables and Enamelled Products

Private Limited (supra), reasonableness of a cause depends upon the facts and circumstances of each case and in the facts of that case looking at

the object and reasons of the Act of 2015, sheer oversight on the part of the bank in not disclosing a document along with its written statement it was

held would not furnish a ground to grant leave, more so when the petitioner was a bank.

16. Having elucidated the above principles, coming to the facts of the case at hand, it is observed that the Plaintiff is seeking production of documents

which are not denied by the Defendants. The Applicant is seeking leave to produce on record the following documents which have been referred to in

paragraph 3 (D) of the plaint and paragraph 11 of the affidavit of evidence, dated 5th, of July 2019 filed by the Plaintiff's witness Mr Rahul

Gupta:

(i) The balance sheet of Defendant no. 1 for the year ending 31st March 2014.

(ii) The balance sheet of Defendant no.1 for the year ending 31st

(iii) The balance sheet of Defendant no.1 for the year ending 31st March 2016.

(iv) The balance sheet of Defendant no.1 for the year ending 31st

(v) Email dated 28th November 2015 (along with attachment, if any),

(vi) Email dated 28th January 2016 (along with attachment, if any,)

(vii) Email dated 5th February 2016 (along with attachment, if any,)

(vii) Email dated 11th February 2016 (along with attachment, if any,).

17. It has been submitted that the balance sheet of the Defendant No.1 for the year ending 31st March 2014, 31st March 2015 and 31st March 2016

clearly contain information of admission of liability/debt payable by the Defendant No.1 to the Plaintiff. It is only in the balance sheet for the year

ending 31st March 2017 that the Defendant No.1 has retracted from the aforesaid admission of liability. It has been submitted that the said balance

sheets constitute an important and crucial evidence to decide the matter in controversy. As regards the emails, it is submitted that paragraph 11 of the

affidavit of evidence of the Plaintiff's witness refers to emails dated 28th November 2015, 28th January 2016, 5th February 2016 and 11th

February 2016 exchanged between the Plaintiff and the Defendants. It is submitted that these emails along with attachments relate to matters in

controversy. These emails along with attachments demonstrate as to how the Defendants reneged from their obligation to pay the monies due and

payable to the Plaintiff. It is submitted that these emails have been referred to in the affidavit of evidence of the Plaintiff's witness, however, they

were not actually produced due to sheer inadvertence. Mr.Naphade has submitted that the documents sought to be produced by the Applicant are

clearly referred to in the plaint and affidavit of evidence which is admitted by the Defendant no.1 but only that the said documents were not produced.

18. Relying upon the decision of this Court in the case of Bank of Baroda vs. Gujarat Cables and Enamelled Products Private Limited (supra) it

has been submitted that sheer inadvertence or oversight cannot be considered to be a reasonable cause for granting leave under Rule 10 of Order XI

of the CPC. Although Mr.Garewal has submitted that sub-rule 10 and sub-rule 5 are similar and rather pari materia, it is to be noted that one rule is for

the Defendant and the other is for the Plaintiff. Further, the decision in the case of Bank of Baroda vs. Gujarat Cables and Enamelled Products

Private Limited (supra) clearly specifies in paragraph 18 that the view has been expressed in consideration of the facts stated in the said case. In the

facts of that case, the cross-examination had already commenced as can be seen from paragraph 6 of the said decision. The reason for seeking to

produce those documents was that the Plaintiff's witness had disputed the debit entries into accounts and that the Plaintiff's witness had admitted

execution of various documents. The trial court in the facts of that case had declined leave and against the refusal of such leave, a writ petition came

to be filed in this Court. It is while considering the decision of the trial court in the facts of that case that this Court in a writ petition under Article 227

of the Constitution of India held that sheer inadvertence or oversight would not furnish or constitute reasonable cause for granting leave under Rule 10

of Order XI of the CPC. In the facts of this case it is the Plaintiffs who are seeking to produce documents which are well within the knowledge of the

Defendants having been referred to in the plaint as well as in the affidavit in lieu of examination-in-chief of the Plaintiffs, where the cross-examination

is yet to commence. The facts and circumstances are clearly distinguishable, in as much as, in the case of Baroda vs. Gujarat Cables and Enamelled

Products Private Limited (supra) there was actual non-disclosure but in the facts of this case, it is not that the said documents were not disclosed;

they were disclosed in the plaint as well as in the affidavit in lieu of examination-in-chief of the Plaintiff but through sheer inadvertence not annexed or

exhibited, which facts are not denied. These facts cannot be said to be similar to the facts in the case of Bank of Baroda vs. Gujarat Cables and

Enamelled Products Private Limited (supra) where as noted above, the documents were not even referred to in the written statement and the

reason for production was that because the Plaintiff had disputed the debit entries in the two accounts and that too after the cross-examination of the

Plaintiff's witness had already commenced. As noted above reasonableness of cause depends upon the facts and circumstances of each case.

Therefore, the reference to sheer inadvertence, in the case, of Bank of Baroda vs. Gujarat Cables, and Enamelled Products

Private Limited (supra) and in this case, has to be seen in the context of the facts of each case, which clearly are different and distinguishable.

19. Moreover, it has been submitted in the rejoinder in paragraph 7 by the Plaintiff and which is not disputed by the defendants that the plaint in the

summary suit filed in respect of an admitted liability seen from the balance sheet of the Defendant No. 1 has been signed and verified by the

Plaintiff's witness i.e. Mr. Rahul Gupta (director of Plaintiff) who has been in Dubai since the year 2013. The affidavit of evidence is also filed by

Mr. Gupta. Mr. Gupta has been in Dubai since 2013 for business and he ordinarily resides in Dubai whereas the Advocates of the Plaintiff are in

Mumbai and due to this there was some lack of co-ordination. As a result the documents although referred to in the plaint and in the affidavit of

evidence were not annexed. The Defendants have not disputed this reasoning. This, therefore, is not only a case of sheer inadvertence with reference

to the facts of this case clearly distinguishable from those in the case of Bank of Baroda vs. Gujarat Cables and Enamelled Products Private

Limited (supra) but also a case of lack of co-ordination between the Plaintiff's director and its lawyers. I, therefore, agree with Mr.Naphade

that this is not a case of sheer inadvertence but a case of lack of co-ordination. In my view this is reasonable and sufficient cause for non-production.

In the facts of this case the Plaintiff has established reasonable and plausible cause for not annexing the documents with the plaint or the affidavit of

evidence. These documents would no doubt be necessary for determining the real controversy in the matter. Even the Defendants in their reply have

referred these documents as crucial documents. The Defendants would also get an opportunity to cross-examine the Plaintiff on these documents.

20. In view of the provisions of Order XI Rule (1)(5) and in view of the above discussion, the arguments on behalf of the Defendants with respect to

the Statement of Truth would not be tenable and the question of falsification of Statement of Truth would not arise.

21. It, however, cannot be denied that the said documents had not been annexed to the plaint or to the affidavit of evidence and although no prejudice

would be caused to the Defendants if the documents are allowed to be produced as the said documents are in the knowledge of the Defendant as well

having been referred to in the plaint and the affidavit of evidence, however, any lack of coordination between the Plaintiff's director and the

lawyers cannot be ignored. Mr.Naphade has submitted that this Court while considering the application for production of the subject documents may

subject the Plaintiff to any terms. I, therefore, propose to balance this aspect by imposing costs of ₹ 50,000 upon the Plaintiff to be deposited with the

High Court Employees Medical Welfare Fund at Mumbai within a period of two weeks.

22. Accordingly subject to payment of the costs as above within a period of two weeks, the application is allowed in terms of prayer clause (a) and (b)

which read thus:

“(a) That this Hon'ble Court be pleased to grant leave to the Applicant to produce on record the following documents :

(i) The balance sheet of Defendant no. 1 for the year ending 31st March 2014.

(ii) The balance sheet of Defendant no.1 for the year ending 31st March 2015.

(iii) The balance sheet of Defendant no.1 for the year ending 31st March 2016.

(iv) The balance sheet of Defendant no.1 for the year ending 31st March 2017.

(v) Email dated 28th November 2015 (along with attachment, if any),

(vi) Email dated 28th January 2016 (along with attachment, if any,)

(vii) Email dated 5th February 2016 (along with attachment, if any,)

(vii) Email dated 11th February 2016 (along with attachment, if any,).

(b) That this Hon'ble Court be pleased to permit the Applicant to file a further affidavit in lieu of examination-in-chief or permit the

Applicant's Advocates to conduct further examination-in-chief to admit in evidence the documents sought to be produced through this

application.

23. The Interim Application accordingly stands allowed and disposed as above.