

Suit No. 346/17 (ID No. 610458/16)  
Kores (India) Ltd.  
Vs.  
Ashish Kumar Ahooja

18/09/2018

Present: Sh. Sumit Gupta, AR of the plaintiff.  
Ms. Richa Sharma, Ld. proxy counsel for the defendant.

**ORDER**

By way of present order, this court shall dispose off application u/O 7 Rule 14(3) r/w Section 151 CPC filed by the plaintiff for placing on record additional documents on the following averments:-

1. The plaintiff by way of the present application craves leave of this Court to place on record the following documents on which the plaintiff is relying upon in the captioned matter:-

(a) Agreement entered into between Kores (India) Ltd. and the company known as Hewlett Packard India Ltd., being HP Agreement no. AD406, effective from 1<sup>st</sup> April, 2000.

(b) Agreement entered into between Kores (India) Ltd. and the company known as Hewlett Packard India Ltd., being HP Agreement no. AG406, effective from 1<sup>st</sup> December, 2003.

(c) Agreement (as amended) entered into between Kores (India) Ltd. and the company known as Hewlett Packard India Ltd., being HP Agreement no. AG406, effective from 1<sup>st</sup> July, 2005.

2. The original agreements are in the possession and under the custody of the company known as Hewlett Packard India Ltd.

and therefore, could not be produced earlier. The plaintiff will file a separate application for summoning the officials of the said company to prove the agreements in question, if need be.

3. The documents will help it in establishing its claim against the defendant and thereby lead to just adjudication of the points at issue between the parties, if this Court were to allow it to file the same.

4. Since the case is at an initial stage and trial has not yet commenced, no prejudice shall be caused to the defendant if the said documents are taken on record by this Court.

5. There has been no intentional or deliberate delay on the part of the plaintiff in seeking to file the documents. Irreparable loss and undue prejudice shall be caused to the plaintiff if the permission, as sought for, is not granted and the documents are not taken on record.

Reply to the the abovesaid application has been filed by the defendant on the following averments:-

1. The present application is a frivolous ploy on the part of the plaintiff to dilate the suit proceedings. The present application is not maintainable as the applicant/ plaintiff has concealed the material facts from this Court that dispute between both the parties arose in the year 2004 when the defendant filed a civil suit bearing no. 189/2004 titled as Ambitious Marketing Vs. Hewlett Packard India Ltd. & Ors. and the plaintiff was impleaded as defendant no.3, who had filed Written Statement through the same authorized signatory and was very well in contact with the HP India Ltd. therefore, the documents sought to be produced could easily be

produced at the filing of the present suit.

2. The present application is not maintainable and it is the conduct of the plaintiff to enter into unnecessary litigation as the plaintiff herein had also filed a SCC No. 804/2004 against the defendant u/S. 138 N.I. Act whereby Ld. MM held that the claim filed by the plaintiff was not maintainable and rightly dismissed the complaint vide its judgment dated 28/02/2006 whereby the Court at Thane after considering the evidence and statement of witnesses of the plaintiff, observed that the defendant had no connection with the plaintiff.

3. During the cross-examination in SCC No. 804/2004, two witnesses appeared to prove the case of the plaintiff. Mr. Rakesh Garg, Commercial Manager and Authorized Representative of the plaintiff appeared as PW1 and another witness Mr. Sanjay Mehrotra, Manager of plaintiff company appeared as PW2. During the cross-examination, both the witnesses gave different version about the agreements entered between the Kores (India) Ltd. and HP Ltd. Both the witnesses stated that agreements were executed between Kores (India) Ltd. and HP Ltd. and on being asked as to why those agreements were not produced, PW-1 replied that as this agreement is not important, so, he did not produce it. While answering the same question, PW2 stated that the said agreement is a confidential document and it is utmost important with respect to Kores (India) Ltd., so this document should be produced in the court. Therefore, there is no acceptable reason or cause which has been shown by the plaintiff as to why these documents were not placed on record by the plaintiff before.

4. The present application is misconceived and devoid of any merit and hence, is not maintainable. The plaintiff has moved the present application at the stage of evidence and is abusing the process of law by filing the present application after framing of the issues in the matter which is unjustified and unreasonable.

5. Plaintiff even if was not having possession of the said documents could have mentioned about the agreements in the plaint, however, it is clear that the plaintiff has nowhere mentioned about the agreements/ documents claimed to have been entered between the plaintiff and HP India Ltd. which are not at all relevant in the present suit as it is evident from the perusal of the plaint.

The defendant has also relied upon the following judgments :-

- (1) *Polyflor Ltd. Vs. A.N. Goenka & Ors. 2016 (159) DRJ 664, 2016 (156) DRJ 600.***
- (2) *Ramanand Vs. DDA & Ors. MANU/DE/2303/2016 and***
- (3) *Bagai Construction Thr. its Proprietor Mr. Lalit Bagai Vs. Gupta Building Material Store (2013) 2 SCR 116***

The plaintiff has filed the suit and in para no. 3, it has been alleged that the defendant had been appointed by the HP, which was then known as Hewlett Packard Ltd., as a wholesaler for its products. At that time, HP itself was also engaged in distribution of its own products. It subsequently appointed distributors as well, already involved in the distribution of products of other manufacturers and the defendant did not object to the same. Further, in para no. 4, it was alleged that there was an

understanding between the distributors and the HP that HP would supply the goods to the distributors against the payment of price of such goods and thereafter, the distributors would supply the goods to the wholesalers including the defendant and recovered the price of the goods from them. Consequently, four distributors, which include the plaintiff, were appointed by the HP.

The Ld. counsel for the plaintiff submits that in order to substantiate the aforesaid pleadings, the plaintiff is required to place on record additional documents, as mentioned in the application and the details whereof are also mentioned hereinabove. The plaintiff has filed the evidence and till date, the examination in chief has not been started and effectively, the evidence is yet to commence in true sense. The defendant can prove his defence by cross-examining the witness of the plaintiff as well as leading its own evidence and in my considered view, no prejudice would be caused to the defendant at this stage in case the additional documents be taken on record and the plaintiff is given the fullest opportunity to substantiate and prove its case. It is well settled law that procedural aspects shall not come into the way of doing the substantial justice. The judgments relied upon by the defendant are totally distinguishable on the facts and there is no straight jacket formula that the application for placing on record the additional documents is liable to be dismissed in all circumstances. It is well settled law that the matter has to be adjudicated as far as the merits of the case and not on the technical objections. It is the substantial justice which is the demand of the cause and not the procedural aspects which are hand made and mistress of the

substantial justice. The delay, if any, can be compensated in terms of the money.

Considering the overall facts & circumstances of the present case, the propriety of justice demands that the application of the plaintiff deserves to be allowed but the plaintiff has to be burdened with the cost of Rs.5,000/- for causing delay in the present matter. Accordingly, the present application is allowed, subject to cost of Rs.5,000/- to be paid to the defendant.

Put up for PE on **20/11/2018**.

**(ARUN SUKHIJA)**  
ADJ-07 (Central)  
Tis Hazari Courts, Delhi  
18/09/2018