<u>**IN THE COURT OF SH. VIDYA PRAKASH : DISTRICT JUDGE (COMMERCIAL) -01 : CENTRAL, TIS HAZARI COURTS, DELHI**</u>

CS (Com) No. 293/2023

Rajan Wahi ..… Plaintiff / Non Applicant.

Versus

Ajay Taneja …. Defendant / Applicant.

<u>**ORDER**</u>
23.07.2025

Vide this order, I shall decide an application under Order 11 Rule 1 (10) read with Section 151 CPC moved by defendant seeking permission to place additional document / supplementary report/opinion dated 30.6.2025 on judicial record, with further prayer to allow said document to be tendered in evidence.

2. Arguments on the aforesaid application have already been heard on behalf of both the sides.

3. I have duly considered the rival submissions made on behalf of the parties and have carefully gone through the material available on record.

4. Brief facts relevant and necessary for disposal of the present application are that the plaintiff has filed the present suit against the defendant for recovery of Rs. 25,39,940/- along with *pendent-lite* and future interest @ 18% per annum since 18.10.2022 till realization. It is stated that the plaintiff is engaged in the business of manufacturing and retailing of silver, gold, diamond and kundan jewellery and is also a valuer for verification / valuation of gold / gold ornaments to many leading banks / NBFC, which provide loans against gold / gold ornaments.

5. It is the case of the plaintiff that being known to him, the defendant came to his shop on 01.7.2020, and purchased one 22 K-HM gold jewellery set (122.960 grams weight) worth Rs. 6,41,728/- and one 22 K-HM gold jewellery bracelet (106.350 grams weight) worth Rs.5,49,723/-,thus, total amounting to Rs. 12,27,195/- inclusive tax and labour charges, for which, the plaintiff raised invoice bearing No. DL/20-21/0130 dated 1.7.2020 and handed over the said jewellery to the defendant. It is stated that the defendant made payment of Rs.12,27,195/-, vide cheque bearing No. 461150 dated 1.7.2020 drawn on YES Bank Ltd., Darya Ganj Branch with the assurance that it will be honoured on presentation.

6. It is further stated that on 2.7.2020, the defendant again visited the plaintiff and purchased 4 pieces of 22 K-HM gold chains (130.840 grams weight) worth Rs.6,71,209/- and 12 pieces of 22 K-HM gold bangles (118.760 grams weight) worth Rs.6,03,301/-, thereby purchased gold for a total amount of Rs. 13,12,745/- inclusive of tax and labour charges, for

which, the plaintiff raised another invoice bearing No. DL/20-21/0133 dated 2.7.2020 and supplied the said gold to the defendant. It is stated that the defendant made payment of Rs. 13,12,745/-, vide cheque bearing No. 461151 dated 2.7.2020 drawn of YES Bank Ltd., Darya Ganj branch with the assurance that it will be honoured on presentation.However, both the aforesaid cheques were returned dishonoured on presentation with the remarks, "*Payment stopped by the drawer*" vide returning memos dated 29.8.2020. Immediately, the plaintiff approached the defendant and requested to make payment of Rs. 25,39,940/-, but the defendant started avoiding the plaintiff on one pretext or the other. Thereafter, the plaintiff got issued legal notice dated 10.9.2020 to the defendant, thereby demanding the due payment, but the defendant sent reply dated 22.9.2020 and reminder dated 3.10.2020, making therein false allegations against the plaintiff.

7. It is further stated that the plaintiff filed a complaint case under Section 138 read with Section 142 of NI Act, 1881 against the defendant titled as *"Wahi Jewellers Vs. Ajay Taneja",* CC No. 3722/2020, pending in the Court of Ld. MM, Tis Hazari Courts. Further, the plaintiff again got issued legal notice dated 1.8.2022 to the defendant, thereby calling upon him to make the payment of Rs.25,39,940/- with interest @ 18% per annum within 15 days. Since, the defendant did not make the said payment, hence,the present suit has been filed by the plaintiff against the defendant for recovery of said amount.

8. In the written statement, the defendant contested the present

suit, *inter-alia* on the grounds that the plaintiff has suppressed the material facts to the effect that the jewellery in question was never handed over by plaintiff to him, as the same was not in stock with the plaintiff at the time of issuance of the cheques in question. It is stated that in the meeting between the parties, it was agreed that the defendant would pledge his diamond and kundan jewellery with the plaintiff and in return, would get a loan on interest payable to the plaintiff and the defendant was assured that upon repayment of said payments, the jewellery articles would be returned back to the defendant. Subsequently, the defendant pledged jewellery worth Rs.1.5 Crore, against which, the defendant was given a loan amount of Rs. 45 lacs. It is further stated that pursuant to repayment of loan amount, the defendant repaid principal amount of Rs. 14,80,000/- and Rs. 4,05,300/- as interest to the plaintiff.

9. It is further stated that on 1st and 2nd July 2020, the defendant had handed over two cheques bearing Nos. 461150 and 461151 as advance for the purpose of purchasing jewellery, however, the plaintiff did not hand over the said gold jewellery to the defendant and the defendant had never signed the said invoices. Therefore, he prays for dismissal of the suit.

10. Now reverting back to the instant application. It is stated in the application that since inception of the present suit, the defendant has asserted that his signatures on invoices No. DL/20-21/0130 dated 1.7.2020 and DL/20-21/0133 dated 2.7.2020 are forged and fabricated and in this regard, the defendant seeks permission of this Court to place on record

supplementary report / opinion dated 30.6.2025 of forensic examination of said original invoices filed by plaintiff in CC No. 3722/2020 titled as *"Wahi Jewellers Vs. Ajay Taneja"* pending before the Ld. MM, Tis Hazari Courts. It is stated that the earlier report / opinion dated 11.10.2023 placed on record by the defendant, was based on examination of alleged signatures of defendant on photocopies of aforesaid invoices by Dr. A.K. Gupta, Forensic Expert, wherein, it was opined that the signatures of defendant on said invoices are forged, though, during the course of his cross examination, Dr. A.K. Gupta has stated that his opinion and analysis were on the basis of photocopies, while verification through original documents is always preferable. Therefore, the defendant obtained original invoices from the Court of Ld. MM and sent the same along with his admitted signatures for forensic opinion. Consequently, after scrutiny and comparison of original invoices with the admitted signatures of the defendant, it has been opined that the signatures of defendant on these invoices are forged and fabricated. Said report was received by the defendant only on 30.6.2025 and hence, the defendant seeks permission to file the said report on record, as also to be tendered into evidence.

11. Reply to the present application has been filed by the plaintiff, wherein, it is stated that the defendant has filed the present application with *malafide* intention to delay the proceedings. It is further stated that as per the Commercial Courts Act, all the documents, which are in power and possession of the defendant, are required to be filed along with written

statement and in this regard, the defendant is required to give Statement of Truth, which has been given by the defendant. Further, it is stated that the defendant has failed to show any plausible reason for not filing the said document earlier, which the defendant now seeks to place on record by way of present application. Therefore, the said document should not be taken on record and the application may be dismissed.

12. Ld. Counsel for the applicant / defendant has argued that although, the report / opinion dated 11.10.2023, based on cross examination of alleged signatures of the defendant, had already been placed on record and forensic expert namely Dr. A.K. Gupta has already been examined as DW4 during trial, however, since the forensic expert testified during his cross examination that his opinion was based upon photocopies of the documents provided to him and analysis of original documents is always preferable, the defendant obtained original invoices from the Court record of Complaint Case filed under Section 138 NI Act by the plaintiff herein and is pending trial before the Court of Ld. Judicial Magistrate First Class (JMFC). He pointed out that the said application moved by defendant, was allowed by the Court of Ld. JMFC vide order dated 9.6.2025, where-after, the applicant/defendant sent those original invoices to same forensic expert on 21.6.2025 and after scrutiny, analysis and comparison of those original invoices with admitted signatures of defendant, forensic expert namely Dr. A.K. Gupta has given his supplementary report/opinion dated 30.6.2025, wherein he has opined that the alleged signatures of defendant in those

invoices are forged and unauthenticated. He further argued that since the supplementary report dated 30.6.2025 was previously not in power, possession or custody of the defendant and came into existence only on 30.6.2025, the present application has been filed immediately before this Court. He, therefore, urged that the said supplementary report / opinion dated 30.6.2025 may be taken on record and the defendant may also be allowed to tender the said report during his evidence. In order to buttress his submissions, Ld. Counsel for defendant has relied upon the decision dated 11.5.2023 in **CS (Com.) No. 124/2021 titled as '***Jumeirah Beach Resort LLC Vs. Designarch Consultants Pvt. Ltd. & Anr.*' passed by Hon'ble High Court of Delhi.

13. *Per contra*, Ld. Counsel for the non applicant vehemently opposed the application on the grounds that the same is totally an abuse of the process of law; the defendant is trying to take undue advantage and has moved the application with *malafide* intention to delay the trial; and the defendant cannot be allowed to fill up the gap and lacuna in his defence under the garb of the instant application. Ld. Counsel further argued that the alleged supplementary report dated 30.6.2025 has been got prepared by defendant in order to cover up the deficiency of earlier report dated 11.10.2023 and the defendant intends to fill up the lacuna in his case by seeking leave of the Court to file the said report. He further argued that the defendant has not furnished any cogent reason for not procuring the original invoices from the judicial record of the Complaint Case pending trial before

Ld. JMFC, Dwarka Courts and since the said report is being attempted to be filed at belated stage, same should not be allowed, lest it will cause prejudice to the case of the plaintiff.

14. Before dealing with the rival submissions made on behalf of both the sides, it would be apposite to reproduce the provision contained under **Order XI of the Commercial Courts Act** which is 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:—*
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> *(a) documents referred to and relied on by the plaintiff in the plaint;*
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> *(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. (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. Order XI Rule 1 (3) provides that 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 proceeding initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have other documents in its power, possession, control or custody.

As per the explanation under Order 11 Rule 1 (3) a declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix."

15. From aforesaid provision, it is quite evident that all the documents are required to be filed by the parties which are in their power and possession with their respective pleadings otherwise same can be filed with the leave of the Court on showing sufficient cause.

16. Now reverting back to the application under consideration. As already noted above, the defendant disputed his signatures on the invoices in question put forth by plaintiff along with the plaint, right from beginning by way of written statement filed on record. After completion of pleadings, first case management hearing was done and issues were framed. Thereafter, the plaintiff led his evidence during trial, during which, defendant filed forensic report / opinion dated 11.10.2023 issued by Dr. A.K. Gupta. The plaintiff's evidence was closed on 13.5.2024, whereafter, the defendant led his evidence and examined four witnesses including DW4 Dr. A.K. Gupta, (who is the forensic expert and had issued his previous report dated 11.10.2023). The said forensic expert was cross examined at length on behalf of plaintiff and thereafter, the defendant's evidence was closed on 6.6.2025 and the matter was directed to be listed on 5.7.2025 for final arguments. At that stage, the application in hand has been moved by the defendant.

17. No doubt, the date of origin of the supplementary report / opinion, which is being sought to be filed by way of this application, is 30.6.2025 and thus, it cannot be said that the said report was already in power, custody and possession of the defendant, or could have been filed on an earlier stage of the proceedings. Nevertheless, the question which arises for consideration before this Court is as to whether or not the defendant can be allowed to file said supplementary report / opinion of forensic expert at

such a belated stage of the proceedings when the matter is listed for final arguments. The answer of this question, in the considered opinion of this Court, is in negative for the following reasons:-

i. The defendant himself preferred not to obtain the original invoices bearing his alleged signatures from the concerned Court of Ld. JMFC wherein the complaint case under Section 138 NI Act filed by the plaintiff herein against him, is pending trial;

ii. It is a matter of record that the said complaint case filed under NI Act was instituted against the defendant way back in the year 2020 *i.e.* much prior to the institution of present suit, hence, the defendant was well within the knowledge of the factum of availability of those original invoices lying in the judicial record of the said complaint case;

iii. The defendant himself preferred to provide photocopies of said invoices along with his admitted signatures to the forensic expert namely Dr. A.K. Gupta (DW4), on the basis of which, he provided his report / opinion dated 11.10.2023 (Ex. DW1/G);

iv. Even after receipt of said opinion / report dated 11.10.2023 (Ex. DW1/G), the defendant remained mute spectator and did not make any effort to provide original invoices to the said forensic expert for providing his further / subsequent opinion. Instead, the defendant preferred to summon the forensic expert and to examine him as DW4 and put relevant questions to him on the basis of his opinion dated 11.10.2023 (Ex. DW1/G); and

v. It is only when the plaintiff conducted detailed cross examination of aforesaid forensic expert, and in response to which, certain facts came to surface, the defendant rushed to the Court of Ld. JMFC; obtained original invoices bearing his alleged signatures and provided the same to the concerned forensic expert for his additional /further opinion.

18. Thus, the entire conduct of the defendant, as highlighted herein-above, would go to show that the defendant is trying to fill up the gap and lacuna in his defence under the guise of the application under consideration. It is well settled law that none of the parties can be allowed to do so and that too at the fag end of the trial. Still if any authority is required, then reference with advantage can be made to the judgment of Hon'ble Apex Court in the case of '*M/s Bagai Construction Vs. M/s Gupta Building Material Store*' Civil Appeal No. 1787 of 2013, (Arising out of S.L.P. (C) No. 35268 of 2011) decided on 22.2.2013, wherein, it has been observed as under:-

> *"5. The only point for consideration in this appeal is whether the plaintiff has made out a case for allowing the applications one filed under Order XVIII Rule 17 read with Section 151*

CPC and another application under Order VII Rule 14 read with Section 151 CPC?"

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8. In ***Vadiraj Naggappa Vernekar (dead) through LRs. vs. Sharadchandra Prabhakar Gogate, (2009) 4 SCC 410****,this Court had observed as under:*

> *"25. In our view, though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.*
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> *xxxxxxxxx*
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> *29. It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination.*

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12. It is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time".

19. In yet another decision of Hon'ble Punjab & Haryana High Court passed in the matter of *'Suresh Kumar Vs. Vinay Kumar & Ors.'*

CR-1625-2017 (O&M) decided on 20.02.2023, the Hon'ble HIgh Court has observed as under:

> *"25. From the above facts, in my considered view, it is clear that defendants have not exercised due diligence, and cannot be permitted at this stage to improve their case or fill up lacunae in their case by leading additional evidence. It has been held to be against the spirit of the Code to allow a party to adduce additional evidence without the fulfillment of either of the three conditions contained in Rule 27*".

20. The decision cited on behalf of defendant is entirely distinguishable from the facts and circumstances of the present case. In the cited decision, the plaintiff therein had sought to file one pen drive containing extracts from YouTube video interview at the stage when issues were yet to be framed. After considering the relevancy of the said document in light of the subject matter of the dispute involved therein, Hon'ble Delhi High Court had been pleased to allow the said document to be brought on record. However, the facts of the present case are entirely distinguishable, for the reasons already stated hereinbefore.

21. In the case in hand, the defendant has failed to show that he acted with due diligence at the appropriate stage, or that any cogent ground is made out at this belated stage of the proceedings for allowing him to file said supplementary report on record, as he has failed to offer any explanation for not procuring the original invoices from the judicial record when the complaint case was filed under Section 138 NI Act for the last consider-

able period. The defendant cannot be permitted to fill up the gaps and lacuna in his defence in the manner in which he is attempting to do by way of application under consideration. Further, this application is not simply for grant of leave to file supplementary report on record, rather, is a feeble attempt on the part of defendant to reopen his evidence also, for proving said report by recalling DW4 during trial and thus, this Court finds considerable force in the argument advanced on behalf of the plaintiff that permitting the defendant to file such report at this stage and reopening of his evidence, would cause serious prejudice to the plaintiff.

22. In view of the foregoing reasons and the discussion made hereinabove, the Court is of the opinion that the application under consideration merits dismissal. Consequently, the same is hereby dismissed. There shall, however, be no order as to costs.

23. Nothing stated hereinabove shall have any bearing on the merits of the case and the observations given are solely made for disposal of the present application.

Announced in the open court
on 23.07.2025

(Vidya Prakash)
DJ (Commercial)-01, Central,
Tis Hazari Courts / Delhi

VIDYA PRAKASH
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