

IN THE COURT OF XI ADDL. DISTRICT AND SESSIONS
JUDGE, (DEDICATED COMMERCIAL COURT), BENGALURU
RURAL DISTRICT, BENGALURU.

Present: SRI. VEERANNA SOMASEKHARA
B.Com., LL.B (Spl.)

XI Addl. District and Sessions Judge,
Bengaluru Rural District, Bengaluru.

DATED THIS THE 14TH DAY OF NOVEMBER 2022

COMMERCIAL O.S. NO.1048/2021

Plaintiff : Prakash Seating Private Limited.
(By : **Sri. A.H., Advocate**)
V/s
Defendant : BASF India Limited
(By : **Sri. S.J., Advocate**)

PARTIES TO I.A. NO.III

Applicant/Plaintiff : Prakash Seating Private Limited.
(By : **Sri. A.H., Advocate**)
V/s
Respondent/defendant BASF India Limited
(By : **Sri. S.J., Advocate**)

ORDERS ON IA NO.III

The counsel for the plaintiff filed this application
U/O XI Rule 1(5) and 1(12) R/w Sec.151 of Code of Civil

Procedure prays to grant leave to produce the additional documents before this court.

2. **The plaintiff has filed this application when the matter was posted for filing of statement of admissions and denials by the parties.**

3. In support of the application, an affidavit of Authorized representative of plaintiff company is filed contending that he is aware the facts and circumstances of the present case. Further he contended that the plaintiff has been constrained to file the instant suit being aggrieved by the acts of the defendant in intentionally or knowingly supplying the plaintiff with defective and inferior chemicals in an irregular supply with arbitrary and unilaterally price escalation resulting in severe losses to the plaintiff and with considerable damages to the plaintiff's reputation. Further, he contended that in the plaint the plaintiff has mentioned the details of losses caused to it on account of replacement of products supplied to its customers as a result of the defective chemicals supplied by the defendant to it. Further, he contended that the plaintiff has also averred that the process of replacement was going on at the time of filing the suit and

that it would revised its claims once full extent of losses was known to him and as such the plaintiff had reserved liberty to substantiate huge claims in future. Further he contended that the plaintiff had supplied the seats to the Tamilnadu State Transport Corporation as sub-contractor of one M/s Sastha Seats. As such the said Sastha Seats had itself carried out the retro fitment works in some of the buses which were supplied to TNSTC with the defective seats made by the plaintiff, wherein the defect / poor quality was only due to the poor quality of chemicals used in the same and the same was supplied by the defendant. Further he contended that subsequent to filing of this suit, the said Sastha Seats provided the plaintiff with documentation of the costs incurred by it in replacing the seats supplied to it by the plaintiff, which had been fitted by it in the buses sold to TNSTC. Further he contended that the documents produced pertaining to the break up of costs incurred by the Sastha seats and the plaintiff acknowledged and acceptance of these costs and the evidence of the plaintiff having paid the same to Sastha Seats. Further he contended that the plaintiff was not able to produce the present documents along with plaint as the said documents were not in existence at the time of filing the suit and as such the plaintiff is constrained to produce

the documents along with this application at this stage as it was shifting offices and was working at a reduced capacity due to the COVID-19 pandemic and hence could not collate and handover these documents to his counsel earlier. Further in any event the plaintiff is producing these documents before the parties have filed their statement of admissions and denial of documents and before witnesses have been examined by either side and as such at this stage if the permission is granted, no prejudice will be caused to the defendant. Further he contended that there is no time limit prescribed for producing the document in existence after a suit has been instituted. Further, the plaintiff has produced the documents mentioned in the accompanying application by invoking the provision of U/O 11 Rule 1(12) of Code of Civil Procedure as amended by the Commercial Courts Act, 2015. Further, he contended that there is no lack of diligence on the part of the plaintiff and due to bonafide reasons mentioned above, at this stage the plaintiff has filed this application and as such at this stage, if this application is not allowed, then the plaintiff will be put to irreparable injury as these documents are the crucial documents to substantiate the contention of the plaintiff. Contending the above facts, he

prays to allow the application. Along with this application, the plaintiff has produced seven documents before this court.

4. Copy served to the counsel for the defendant. In turn, counsel for the defendant has filed the objections to the application contending that the documents sought to be produced by the plaintiff are not related to this case as the said documents are corresponding to third party and as such the application filed by the plaintiff is frivolous, vexatious and untenable in law and as such the same is liable to be rejected in limine. Further he contended that in response to the suit summons, the defendant has appeared before this court through its counsel on 08.08.2021 and on 21-09-2021, he has filed its written statement denying the averments made in the plaint in toto. Further he contended that on 21-09-2021, the defendant has also filed the counter claim along with the written statement seeking for some reliefs on the ground that it was the plaintiff who owed the sums to the defendant and that the cause of action arose on 08-12-2018 and 23-12-2018 when the amounts payable became due from the plaintiff.

5. Further he contended that the documents at Sl. No.1 and 2 sought to be produced before the court by the

plaintiff are the ledgers or cost sheets which were issued to the plaintiff on 06 January 2021 and 08.01.2021, but the said documents are corresponding to the year of 2019. Further he contended that all the other documents are also pertaining to the year of 2018 and 2019, but recently the plaintiff has obtained the said documents from one Sastha Seats and as such those documents are noway connected to the alleged transaction taken place between the plaintiff and the defendant herein. Further he contended that the plaintiff has already filed the documents along with plaint declaring that additional documents may be introduced at the stage of evidence. Further he contended that Order 11 Rule 1(4) and (5) of CPC are not applicable to the case of the plaintiff. Further he contended that the plaintiff was required to report the detail ledger of the retro fitments carried out by Sastha while filing the suit and after a report to that effect in the plaint in consonance with Rule 4, the plaintiff would have right to file such additional documents within 30 days or seek leave of this court and thereafter to produce such documents that were in fact within the power of the plaintiff to produced before the court. Further he contended that it is highly implausible that the retro fitment works which were carried out by the third party i.e., Sastha Seats in the year 2018-19

were invoiced and brought to the attention of the plaintiff after filing of the present suit in the year 2021-2022. Further the plaintiff has already crystallized its alleged claim of Rs.87,64,567/- as compensation and in support of its claim, the plaintiff has presented the documentary evidence along with the plaint. Such being the status of the case, the plaintiff cannot be allowed to produce further documents in anticipation of its requirements at the stage of evidence. Further he contended that on 29-01-2021, the defendant has filed the written statement along with its counter claim after delay in filing the written statement by the defendant was condoned by this court. Further he contended that on perusal of the document No.1 and 2 sought to be produced along with this application reveals that the ledgers are relating to the retro fitments carried out in the year 2018 and 2019 and as such the plaintiff has an afterthought sought to produce those documents along with this application and as such the same are not permissible under law. Further he contended that the plaintiff has failed to demonstrate how these documents would be important for adjudication of this case. On the other hand, the sole reason shown by the plaintiff in this application is that the documents are sought to be filed prior to the statement of admission and denial of

the documents and before witnesses have been examined by either side and as such only on that ground, the application filed by the plaintiff cannot be allowed.

6. Further he contended that the documents sought to be produced into evidence by the instant application do not remotely relate to the transaction that took place between the plaintiff and defendant herein. Further he contended that the documents sought to be produced by the plaintiff along with this application are pertaining to transaction for the year 2018-19 and as such those documents are not necessary to adjudicate this matter properly. Further he contended that the plaintiff has not filed this suit in an urgency and no leave was sought then for production of the additional documents that were evidently within the power and control of the plaintiff. Further he contended that the plaintiff has not shown any proper reasons for delay in production of these documents before this court. Contending the above facts he prays to reject the application filed by the plaintiff with costs.

7. On perusal of the contents of the affidavit filed by the authorized representative of the plaintiff company and on perusal of the contents of objections filed by the counsel for

the defendant, the following short points that arise for my consideration are:-

- 1) **Whether the plaintiff has made out a good ground to allow this application?**
- 2) **What order?**

8. Heard the arguments on both the sides and perused the records.

9. In support of the arguments, learned counsel for the plaintiff relied upon an unreported orders passed by the Hon'ble High Court of Andhra Pradesh in **CRP Nos.948 and 1317/2021 dt.07.02.2022 (Vijaya Municipal Corporation V/s Vensar Construction Company Ltd and an order passed by the Hon'ble High Court of Madras in OSA (CAD) Nos.97, 111, 5 and 4 of 2011 dt.31.01.2022 (Thirumal Milk Products Pvt. Ltd., V/s Thirumala Dairy Ltd and others)**. On other other hand learned counsel for the defendant has relied upon an unreported order passed by the Hon'ble High Court of Delhi in **CS (COMM) 1611/2016 dt.04.04.2018 (Columbia Sportswear Company V/s Harish Footwear and another and another citation reported in 2018 SCC Online Del.13407 (Vikram Roller Flour Mills Ltd., V/s KRBL Ltd)**.

10. My findings to the above points are as under:-

Point No.1 : In the Negative;
Point No.2 : As per final order,
for the following :

REASONS

11. **Point No.1:-** During the course of arguments, learned counsel for the plaintiff argued by reiterating contents of affidavit filed by the authorized representative of plaintiff company in support of this application. Further he argued that at present if this application is allowed and permitted the plaintiff to produce the documents as prayed for in the application, then no prejudice will be caused to the other side as those documents are very much necessary in this case to adjudicate the matter properly. Contending the above facts, he prays to allow the application filed by the plaintiff.

12. Per contra, learned counsel for the defendant argued by reiterating the contents of objection filed by him to this application. Further he argued that on perusal of the contents of the affidavit filed by the authorized representative of the plaintiff company itself shows that, at the time of filing the suit the present documents intending to produce before this court were not in existence. But on perusal of the

contents of the alleged documents produced by the plaintiff itself shows that those documents are of the year 2018-19, in spite of that the plaintiff has not mentioned the same in his earlier pleadings and as such at present the application filed by the plaintiff is not maintainable one. Further he argued that the additional documents produced by the plaintiff are no way concerned to the real question in controversy arose between the plaintiff and defendant and as such the application filed by the plaintiff is liable to be dismissed. Contending the above facts, he prays to dismiss the application filed by the plaintiff with cost.

13. On rival contentions urged by both the parties, I intend to discuss the merits of the application filed by the plaintiff.

14. On perusal of the records, it reveals that the plaintiff has filed this suit against the defendant for seeking the relief of compensation for the damages suffered by the plaintiff as a result of the acts of the defendant and also other reliefs. Further it reveals that, in response to the suit summons, the defendant has appeared before the court through his counsel and filed the written statement along

with counter claim and when the case was posted for filing of statement of admission and denials by both the parties, then the plaintiff has filed this application permitting him to produce these documents before this court as additional documents.

15. On perusal of the contents of affidavit filed by the authorized representative of the plaintiff company in support of this application, it shows that the contention of the plaintiff is that, he had supplied the seats to TNSTC as a sub contractor of one M/s Sastha Seats and as such the said Sastha Seats had itself carried out the retro fitment works in some of the buses which were supplied to TNSTC with the defective seats made by the plaintiff wherein the defect/poor quality was only due to the poor quality of chemicals used in the same as supplied by the defendant and as such subsequent to filing of the suit, the said Sastha Seats provided the plaintiff with documentation of the cost incurred by it in replacing the seats supplied to it by the plaintiff which had been fitted by it in the buses sold to TNSTC and as such at the time of filing the suit, those documents are not within the custody of plaintiff and as such he has not produced those documents before this court along with the plaint.

Further the contention of the plaintiff is that, the documents sought to be produced along with this application are very much necessary in this case to adjudicate the matter properly and also at this stage if permission is granted to the plaintiff to produce those documents before this court, then the defendant has an opportunity to cross-examine the plaintiff to that effect and as such at this stage if permission is granted to the plaintiff to produce those documents before this court, then no hardship will be caused to the other side.

16. On the other hand on perusal of the contents of objection filed by the defendant, it reveals that the contention of the defendant is that, on perusal of the contents of the affidavit filed by the authorized representative of plaintiff company itself shows that, the documents sought to be produced along with this application were not in existence at the time of filing the suit. But, on perusal of the contents of the documents sought to be produced along with this application shows that, those documents are for the period of 2018-19 and as such the contention of the plaintiff is inconsistent one and the same is not acceptable one. Further another contention of the defendant is that the documents sought to be produced along with this application are noway

connected to the alleged transaction taken place between the defendant and plaintiff and as such those documents are not necessary in this case to adjudicate the matter properly. Further the contention of the defendant is that the plaintiff has not shown any proper reasons and grounds to allow this application.

17. Further on perusal of the contents of affidavit filed by the plaintiff in support of this application, it shows that at present the plaintiff is intending to produce 7 documents which were issued by the Sastha Seats in favour of the plaintiff company. Further on perusal of the records, it reveals that at the first instance i.e., on 02.03.2020, the plaintiff has filed this suit against the defendant before the Hon'ble Prl. City Civil and Sessions Court, Bengaluru and later the same was made over to 83rd Addl. City Civil and Sessions Court, Bengaluru. Then the said court has issued summons to the defendant and in response to the said summons, the defendant has appeared before the said court through its counsel and filed the written statement along with counter claim. But, in the meantime, the Commercial court was established for Bengaluru Rural District, as such this case has been transferred from that court to this court, then this

court has registered the case in Com. O.S.No.1048/2021. After registration of the suit, the court notices were issued to both the parties and the same was personally served to them. In response to the court notices, the plaintiff and defendant have appeared before this court through their respective counsel and contested the case.

18. Further on perusal of the contents of the document No.1 and 2 i.e., costsheets produced by the plaintiff along with this application, it shows that those documents are issued by one Sastha Seats, Karur in favour of the plaintiff and the said documents are pertaining to the period from April-2019 to November-2019. Further on perusal of the contents of the document at Sl.No.3 i.e., e-mail and document No.4 i.e., letter and document No.5 i.e., copy of invoice, it shows that those documents are issued by one Sastha Seats, Karur in favour of the plaintiff and the said documents are also pertaining to the transaction taken place between the plaintiff and Sastha Seats and those documents are pertaining to the period from April-2019 to November-2019.

19. At this stage I have gone through the provision of U/O XI Rule 2, 3, 5 and 7 of CPC. On going through the said

provision, it reveals that the plaintiff and defendant shall produce all the documents along with the plaint and written statement which are in their power, possession and their custody. Further at this stage, I have gone through the provision of U/O XI Rule 5 of CPC which reads as under:-

“The plaintiff shall not be allow to relay on documents which were in plaintiff’s power, possession, control or custody and not disclosed along with plaint or with 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.”

On going through the above said provision, one thing is clear that if the plaintiff has not produced the documents along with plaint and subsequently he intends to produce the documents by leave of the court, then he has to establish reasonable cause for non-disclosure regarding the said documents along with the plaint.

20. But, on perusal of the records, it reveals that at the time of filing the suit, the plaintiff has filed the statement of truth along with the plaint before the concerned court. On perusal of the contents of the said statement of truth,

wherein at para No.5 of the statement of truth, the plaintiff has clearly mentioned as under:-

“I say that all documents in the plaintiff company’s power, possession, control or custody pertaining to the facts and circumstances of the present proceedings have been disclosed and copies there of annexed with the plaint and that I do not have any other documents in my power, possession, control or custody. I crave leave to produce any additional documents as may be required during the course of trial”.

On going through the above said contents, it clearly reveals that, the plaintiff has clearly stated that except the documents already filed by him before this court, he is not having any other documents in his possession, control or custody. But, on perusal of the documents produced along with this application, it shows that those documents are for the year 2018-19. But, on perusal of the contents of the para No.6 of the affidavit filed by the plaintiff in support of this application, wherein the plaintiff has clearly mentioned that at the time of filing the suit the documents sought to be produced along with this application are not in existence. Considering the above facts and looking to the contents of the documents and on perusal of the contents of Para No.6 of the affidavit, I am of the opinion that the contention of the

plaintiff is inconsistent one. On the other hand at the time of filing the suit, the plaintiff is having knowledge regarding the existence of the documents produced along with this application. But, in spite of that the plaintiff has not narrated the said facts in the plaint and also in the statement of truth filed by him.

21. Further on perusal of the entire contents of the affidavit filed by the plaintiff in support of this application, it shows that at this stage the plaintiff has not shown any proper reasons for non-production of those documents along with the plaint presented by him. Considering the above facts and for the above reason, I am of the opinion that at this stage the plaintiff has not shown any proper reasons to grant leave to him for production of documents before this court.

22. At this stage, I have gone through the citations relied upon by the counsel for the plaintiff as mentioned above. On going through the said citations, the observation of the Hon'ble High Court of Delhi is not aptly applicable to the case on hand, as the facts and circumstances involved in those citations and facts and circumstances of the present case are different one. On the other hand at this stage, I have

gone through an unreported order passed by the **Hon'ble High Court of Andhra Pradesh in CRP No.949 and 1317/2021 dt.07.02.2021**. Wherein, the Hon'ble High Court observed as under:-

“Civil-Additional documents-application to receive-order XI Rule 1(5) of Code of Civil Procedure, 1908 (CPC) – present civil revision petitions are filed challenging orders dismissing application filed by petitioner herein U/O XI Rule 1(5) of CPC as amended by Commercial Courts Act, 2015, to receive documents for purpose of marking them as exhibits -Whether order under challenge need interference -Held, there is no declaration on oath enclosed to plaint -No reasons are stated even in plaint as to why document No.1 could not be filed along with plaint – Tender was published in News paper – e-procurement tender along with plaint, but failed to file document No.1, which was short tender notice published in News Paper- Documents, which are in its power, possession, control and custody at time of filing of suit, are not presented along with plaint, as required U/O XI Rule 1(1) of CPC – Sans any declaration to that effect said document could not have been allowed to be exhibited – Revision petition dismissed”.

On going through the said order, the above observation of the Hon'ble High Court is aptly applicable to application on hand.

23. Considering the above facts and circumstances of the case and looking to the stage of the case and for the above reasons, I am of the opinion that at this stage the plaintiff has failed to make out a good ground to allow this application. Accordingly, I answer this point in the Negative.

24. **Point No.2:-** In view of the findings on point No.1, I proceed to pass the following:-

ORDER

IA No.III filed by the plaintiff
U/O XI Rule 1(5) and 1(12) R/w
Sec.151 of CPC is hereby
dismissed.

No order as to cost.

(Dictated to the typist directly on computer, typed by her corrected by me, signed and then pronounced by me in the open court on this 14th day of November, 2022)

(VEERANNA SOMASEKHARA)
XI Additional District Judge,
Bengaluru Rural District,
Bengaluru.