

KABC170017162023



**IN THE COURT OF LXXXII ADDL. CITY CIVIL & SESSIONS
JUDGE, AT BENGALURU (CCH. 83)**

THIS THE 5th DAY OF FEBRUARY 2025

PRESENT:

**SUMANGALA S. BASAVANNOUR., B. COM, LL. M.,
LXXXII ADDL. CITY CIVIL & SESSIONS JUDGE,
BENGALURU.**

I.A. No.III

IN

Com.OS.No.835/2023

BETWEEN:

**M/s.Brunton Developers
and another.**

: Plaintiff

AND

**M/s.JSM Corporation
Pvt.Ltd.**

: Defendant

ORDERS ON I.A. No.III

The Plaintiff filed this application Under Order XI Rule 1 (5) read with Section 151 of CPC the plaintiff sought permission to produce the document.

2. In enclosed affidavit the authorized signatory of the plaintiff stated on oath that, the defendant in their written statement raised certain claims and defenses which necessitate the production of the documents accompanied with this application to substantiate the plaintiff's case and to counter the defendants allegation. Further, one of the documents (Partnership deed) that is sought to be produced is in response to a question that was posed by the Defendants counsel during cross-examination of PW.1. These documents were in the custody of his accountant, Mr. Sunil Swamy. The plaintiff had filed necessary document that were immediately available with the plaintiffs at the time of filing of the present suit. However, the plaintiffs couldn't produce the accompanying documents as it could not trace them immediately. One of the documents that are sought to be produced by the plaintiffs are bank statement which date back to 2016. since they are old documents, the plaintiffs couldn't trace them immediately and file with the plaint. The documents that are sought to be produced are

closely related to the documents already on record and no new case is being sought to be set up. The documents accompanying the present application are being filed to bring completeness and context to the facts and documents already on record. The refute the allegations/ defenses taken by the defendant in their written statement regarding email communications and rent payment. The accompanying documents will assist this court in effectively adjudicating the present suit. The assertions made by the defendant in their written statement are directly contrary to the facts of the case, Therefore, to substantiate the above claims and to assist this court effectively adjudicate the present case, the plaintiffs are seeking to produce the statement of accounts showing that the rents paid by the defendants from 2018 till the defaults began in 2018 and email correspondences, which are crucial to affirm the rent understanding between the plaintiffs and defendant. The production of these documents is necessary for just and proper adjudication of the present case. The delay in producing these documents is bonafide and unintentional, and it is only due to the nature of the documents that they could not be immediately filed with the plaint. Further, the documents also address the claims raised by the defendant. The documents accompanying the present application will bring completeness and context to the facts and documents already

on record. Hence, this application.

3. The Defendant has filed objection stating that, while having filed the plaint in accordance with the Commercial Courts Act, 2015 has filed a Statement of Truth oath stating that there are and that they have no further documents in power, possession, control and custody of the plaintiff, pertaining to the facts and circumstances of the proceedings. The witnesses nO.1 on behalf of the said unregistered plaintiff partnership firm being the plaintiff No.1 herein is now seeking to produce additional documents in a manner unknown to law and contrary to the statement of truth which was sworn to in an affidavit on oath, and on this premise alone the present application as well as the plaint ought to be dismissed on account of a patently false statement of truth having been filed. There is no valid reason ascribed on the basis of which additional documents all dated between 2014-19 are now sought to be adduced which could not have been done so while filing the plaint and the said statement of truth in 2023. The said documents find no relevance in the plaint nor the affidavit in chief filed by the plaintiff witness No.1 and hence, ought not to be relied upon. Therefore, in the absence of pleadings, no evidence can be lead thereon. The bank account statement are photocopies/computer generated copies and not duly certified

as required under the Bankers Books of Evidence Act, 1891. Further, they are not supported by a certificate under Section 63 of the Bharatiya Sakshya Adhinyam 2023 as required by law and therefore, cannot be produced. The email communications are not supported by a certificate under section 63 of the BSA as required by law. Purported photocopy of the Deed of reconstituted partnership dated 18.07.2024 cannot be produced/marked in evidence by the plaintiffs. In view of the plaintiff No.1 being an unregistered partnership firm, the suit does not survive. The plaintiffs have not produced the originals and have only produced photocopies/printouts of the said partnership deeds and hence the same cannot be relied upon by the plaintiffs. The plaintiffs as an afterthought, after the PW.1 having being cross-examined, have sought to produce/rely on the documents in order to cover up the shortcoming in their plaint and the evidence so brought about and the cross-examination concluded of PW.1. If the present applications under reply is allowed, the undersigned defendant herein would be put through monumental loss, injury and damages, which cannot be compensated by any means, resulting in gross miscarriage of justice. Per contra, the plaintiffs will not be put through any injury, loss or inconvenience if the present application is rejected.

4. I have heard the arguments of the learned Advocates for both parties.

5. Based on the contentions of the respective parties, submissions made by the learned Advocates for both parties, I formulate the following Points for my consideration:-

(1) Whether the Plaintiff has made out a grounds to allow the application ?

(2) What Order?

6. My findings are as follows:-

Point No. 1: - In the **Affirmative.**

Point No. 2: - As per my final orders for the following reasons.

REASONS

7. Point No. 1: - Perused the records this application is filed at the stage of further evidence of plaintiff. The plaintiff intended to produce the additional documents i.e., statement of account of the 1st plaintiff and 2nd plaintiff, Email correspondences between the plaintiff and defendant showing the monthly net sales of the restaurant run by the defendant and the details of the payments made by the defendants to the

plaintiffs and partnership deed of the plaintiffs. The documents that are sought to be produced by the plaintiffs are bank statements which date back to 2016. Since they are old documents, the plaintiffs couldn't trace them immediately and file with the plaint and further the plaintiffs are seeking to produce the statement of accounts showing that the rents paid by the defendant from 2016 till the defaults began in 2018 and email correspondences, which are crucial to affirm the rent understanding between the plaintiffs and defendant and further taken a contention that, in their written statement raised certain claims and defenses which necessitate the production of the documents accompanied with this application to substantiate the plaintiffs case and to counter the defendant's allegation. Further one of the documents that is sought to be produced is in response to a question that was posed by the Defendants counsel during cross-examination of PW.1. These documents were in the custody of his accountant Mr. Sunil Swamy.

8. On the other hand the defendant contention that, the email correspondence and bank statement are nor supported by a certificate under Section 63 of the Bharatiya Sakshya Adhinyam 2023. Non production of certificate at the stage is not a ground to reject the application. The certificate is

compulsory for marking of the documents. At this stage, the question is whether the additional document produced by the plaintiff cannot be allowed, whether it is helpful for adjudication of this case. Ofcourse these documents are produced at belated stage. But these documents are produced in order to counter assertions made by the Defendant in the written statement.

9. Order 11 Rule 1 clause c (ii) reads as under :

In answer to any case set up by the defendant subsequently to filing of the plaint.

10. The plaintiff intended to produce the photocopy of the acknowledgment of registration of firm certificate and Deed of Partnership and reconstitution. The plaintiff has not explained why he has not produced the original deed of reconstitution partnership deed. However, at this stage we cannot consider admissibility of document in evidence. The question before this court as above stated whether the production of documents can be allowed or not.

11. It is an admitted fact that the plaintiff has not stated regarding these documents in plaint averments. But he has

clearly stated that these documents are required to answer the case setup by the defendant. The provision 11 Rule 1 clause c (ii) provides that, the plaintiff can produce the document to answer the case setup by the plaintiff. Under these circumstances, in order to avoid the multiplicity of proceedings, it is just and proper to allow the application in the ends of justice. However, inconvenience caused to the defendant is to be compensated by imposing cost. Hence, I answer this point in the Affirmative.

12. Point No. 2: - Accordingly, I pass the following order.

ORDER

IA No.III filed by the Plaintiff Under Order XI Rule 1 (5) of CPC is allowed with cost of Rs. 2,500/-.

(Dictated to the Stenographer, typed by her transcribed by her, verified by me and pronounced in the open court on **5th Day of February 2025**).

sd/-
(SUMANGALA S BASAVANNOUR)
LXXXII Addl. City Civil & Sessions Judge,
Bengaluru.