

KAUK010008052020



**IN THE COURT OF THE PRL.DISTRICT & SESSIONS JUDGE,  
UTTARA KANNADA, KARWAR.**

**DATED THIS THE 7<sup>th</sup> DAY OF JULY-2023**

**COMMERCIAL O.S NO:11/2020**

**PRESENT:**

**Sri.D.S.Vijaya Kumar,**  
*B.Sc., LL.B.,*  
Prl. District and Sessions Judge,  
Uttara Kannada, KARWAR.

**PLAINTIFF:**

**Opponent:**

West Coast Paper Mills Limited,  
Dandeli.

(By Sri. V.A.Todurkar., Advocate )

**Vs.**

**DEFENDANTS:**

**Applicants:**

1.M/s Desi Guravaiah and Co.  
Represented by Managing Partner,  
Desu Ramesh Babu and two others.

(By Sri. J.P.Naik., Advocate)

**ORDERS ON IA.X**

The defendant No.2/ applicant has filed IA.X under Order XII Rule 8 r/w 151 of CPC seeking the direction of the Court to the plaintiff to produce the account statement of ICICI Bank account bearing No.039351000084, Mumbai branch from 1-1-2020 to 28-2-2020.

2. The brief averments made in IA.X filed by the defendant No.2 are that, he is authorised to file the affidavit on behalf of the defendant No.1 and 3. Further he submits that he has deposited the amount from January-2020 to February 2020 in the ICICI Bank account of plaintiff bearing No.039351000084, Mumbai branch and when it was asked to the plaintiff in the cross examination whether he will produce the bank account statement of the said ICICI bank before the Court, plaintiff clearly stated that he is not going to produce any further bank account statement. The plaintiff is with-holding the best evidence which is infavour the defendants to prove the falsity of plaintiff's claim that the defendant No.2 did not paid any amount from 1-1-2020. Producing the account statement of ICICI Bank account of plaintiff bearing No.039351000084, Mumbai branch from 1-1-2020 to 28-2-2020 the plaintiff will not suffer any loss or hardship, but if not produced the defendants will definitely suffer sever hardship which cannot be compensated by any means. Hence, prayed for direction to the plaintiff to produce the account statement of ICICI Bank account of plaintiff bearing No.039351000084, Mumbai branch for the period from 1-1-2020 to 28-2-2020.

3. The plaintiff has filed objections to the IA.X and has contended that the application filed by the defendants is contrary

to law and true facts of the case. Further contended that the defendants have made some payments from their account to the account of the plaintiff from January-2020 to February-2020 at ICICI Bank account of plaintiff bearing No.039351000084, Mumbai branch and production of statement of account would establish such payments. If that is so the defendants can very well produce their statement of account to establish such payment. The plaintiff has filed the suit seeking recovery of money with respect to the value of goods supplied to defendants from 48 invoices dated: 4-1-2020 to 19-2-2020 which are marked in the suit. The payment made by the defendants to the account of plaintiff Company pertaining to previous invoices and the said fact has been admitted from E-mails sent by defendants to plaintiff Company. The defendants are now trying to create confusion by seeking production of bank statement to establish a fact which is not pleaded in the pleadings. Hence the defendants cannot be allowed to traverse beyond pleadings and seek production of bank statement of the plaintiff company. Further submitted that in the event of the Court taking a view that bank statement of plaintiff company is required to be produced, it is prayed that the plaintiff may also be permitted to produce all such documents to establish that payments made by defendants in the month of January-2020 and February 2020 pertain to previous invoices by recalling PW- 1 for further chief

examination. Hence prayed to dismiss the application filed by the defendant.

4. In the circumstances, following points arise for determination:

- 1) Whether the defendants are entitled for the relief as sought for in IA.X?
- 2) What Order?

5. My finding on the above points are as under:

Point No.1: In [the Negative](#).

Point No.2: As per final order, for the following:

### **REASONS**

6. **Point No. 1:** I have perused the IA.V filed by the defendant, objections filed by the plaintiff and documents available on record. The plaintiff company has instituted this suit for recovery of a sum of Rs.1,79,34,416/- from the defendants along with interest. After the issues were framed the plaintiff has examined 2 witnesses on its behalf as P.W-1 and 2. The defendants have not chosen to cross-examine P.W-2 inspite of sufficient opportunity. Therefore by treating the cross-examination of P.W-2 as nill the matter is set down for the defendants side evidence. At this point the defendants have filed

this application seeking direction to the plaintiff to produce the plaintiff's account statement of its account with ICICI bank limited bearing A/c No. 039351000084, Mumbai branch for the period from 1/1/2020 to 20/8/2020. In the affidavit filed in support of the application. The defendants state that the defendant company has deposited the amount from January 2020 to February 2020 in the above said account of the plaintiff company, but the plaintiff has not produced the Account statement before the Court and in the cross-examination of P.W-1, he has stated that he will not produce the said bank account statement. If the said account statement of the plaintiff bank account is produced it would show the deposits made by the defendant. Therefore, the plaintiff's must be directed to produce the said statement of account.

7. On the other hand it is the contention of the plaintiffs that the defendant company is trying to protract the proceedings of the suit . The defendant have deliberately not chosen to conduct the cross-examination of P.W-2. If the defendants have deposited any amount as claimed, they might themselves produce their bank account statement or challans to show the deposits made by them and hence the question of the plaintiff producing the bank statement before the Court is not called for.

8. I have considered the rival contentions. Now the case is for the defendants evidence. It is the contention of the defendants that some amount has been deposited by the defendants in the above said account of the plaintiff company. If such is the case the defendants might produce their own bank statement to show that the amount has been paid to the plaintiff bank by making deposit. In the supporting affidavit the defendants do not reveal the particular dates of the deposit of the amount and also details of the amounts deposited. It is also not stated as to whether the amount was transferred from account to account through NEFT etc or by issuing cheque or by directly depositing to the account of the plaintiff bank. In any event the defendants are supposed to have documents in proof of such deposits or payments to the plaintiffs bank account. Therefore, the defendants might themselves produce their documents to prove the above said aspect the burden of which is on them. If they produce any material to show that they have deposited the amount then the onus would naturally shift onto the plaintiff company. Under this circumstance, I am of opinion that the application is filed for protracting the proceedings and there is no substance in relief sought for. Consequently, point No.1 is answered in the Negative.

9. **Point No.3**: On the above findings, I proceed to pass the following:

**:ORDER :**

The IA.X filed under Order XII Rule 8 r/w 151 of CPC by the defendants/ applicants is here by dismissed.

(Dictated to the Stenographer, typed by her, revised and corrected by me, signed and then pronounced in the Open Court on this the 7<sup>th</sup> Day of July 2023.)