



**IN THE COURT OF LXXXIX ADDL.CITY CIVIL &
SESSIONS JUDGE, BENGALURU. (CCH-90)**

Present: Sri.S.J.Krishna, B.Sc., LL.B.,
LXXXIX Addl.City Civil &
Sessions Judge, Bengaluru.

Dated: 14th FEBRUARY 2023

Com.O.S.No.188/2019

Plaintiff : M/s.Krishna Flour Mills
(Bangalore) Private Limited,
Regd.Office and Mills at No.19,
Platform Road,
Bangalore-560 020.
R/by its Personnel Officer,
Mr.Prashanth.T.H,
Aged about 45 years,
S/o Late T.C.Halappa.

(By Sri.Mithun.G.A-Advocate)

V/s.

Defendant : 1. M/s.Snehamayi Mahila Seva
Enerprises,
Office at No.118,
Outer Ring Road,
Kempegowda Layout,
Laggere, Bangalore-560 058.
2. Smt.Vijaya Shivakumara Swamy,
W/o Shivakumar Swamy.S.
Aged Major, No.118, Outer Ring
Road, Kempegowda Layout,
Laggere, Bangalore-560 058.
3. Smt.Bhagyashree Shivakumara
Swamy,
D/o Shivakumar Swamy.S,
Aged Major, No.118,

Outer Ring Road,
Kempegowda Layout,
Laggere, Bangalore-560 058.
4. Smt.Ashwini Shivakumara
Swamy,
D/o Shivakumar Swamy.S,
Aged Major, No.118,
Outer Ring Road,
Kempegowda Layout,
Laggere, Bangalore-560 058.

(Defendant No.1 to 4- By
Sri.Y.C.Shivakumar-Advocate)

ORDERS ON I.A.No.7 FIELD UNDER ORDER XI

RULE 1(7)(c) (ii) R.W.S.151 CPC BY THE DEFENDANTS

The plaintiff has filed this suit against the defendant to pass a judgment and decree directing the defendants jointly and severally to pay outstanding principal amount of ₹.50,16,356/- on the running account in the name of defendant; to pay interest amount of ₹.34,57,392/- on the outstanding principal amount at the rate of 22% p.a. from the date of outstanding due till 28.02.2019 and current and future interest at 22% p.a. till the date of realisation.

2. The defendants have examined Smt.Vijaya Shivakumar, as DW.1. After filing the affidavit evidence by DW.1, the defendants have filed IA.No.7 under Order XI Rule 1(7)(c)(ii)CPC praying the Court to permit them to produce e-mail dated:04.04.2015 and 20.04.2016 in the interest of justice and equity.

3. The Plaintiff has filed objections to IA.No.7 and prayed the Court to dismiss the same.

4. I have heard the arguments addressed by the learned counsel on record. I have gone through the materials available on record.

5. The following points arise for my determination:-

- (1) Whether the defendants have made out a case so as to allow I.A.No:7 filed under Order XI Rule 1(7)(c)(ii) CPC?
- (2) What Order?

6. My findings on above points are as under:

Point No.1: IN THE **AFFIRMATIVE**

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

REASONS

7. **Point No.1:** The the defendants have filed IA.No.7 under Order XI Rule 1(7)(c)(ii)CPC praying the Court to permit them to produce e-mail dated:04.04.2015 and 20.04.2016 in the interest of justice and equity.

8. Smt.Vijaya Shiva Kumar, one of the partners of the defendant No.1 firm has filed an affidavit in support of IA No.7. She has stated that during the course of the cross-

examination of P.W.1, Mr. Prashanth, he has, for the first time, stated on oath that one Smt.Preethi, who was the sales coordinator of the Plaintiff Company was only an administrative assistant and not the sales coordinator. The said stand of P.W.1, was taken for the first time only after the Plaint was already on record and during the course of cross examination of P.W.1. Therefore, in order to answer to this case put up by P.W.1., after the pleadings in the above suit is already completed, The defendants wish to rely the email dated 04.04.2015.

9. Though P.W.1, who claims to be the authorised representative of the Plaintiff Company and further claims to have personal knowledge of the alleged transactions between the parties, has feigned ignorance and lack of memory on several key facts related to the role played by the Plaintiff Company in respect of the alleged cause of action. Therefore, to refute the said stance of P.W.1, which also became aware to defendants only after the pleadings in the above suit were already completed, the defendants wish to produce the email dated 04.04.2015 and 20.04.2016.

10. These emails were not exchanged on any email addresses held by her. Rather, the said emails were in the mailbox associated with the email address shivakumar_28573@yahoo.com, which belongs to her

husband Mr. Shiva Kumara Swamy, who was formerly an employee of the Plaintiff officials. Therefore, once the deposition of P.W.1, in the above suit, was made available to her, she requested her husband to identify any documents in his records that could refute the stance of P.W.1. Accordingly, Mr. Shiva Kumara Swamy after searching through his records discovered the said emails which he then printed and handed over to her.

11. For the above reasons, she could not produce the aforesaid emails along with her written statement and additional written statement. Furthermore, since the relevance of the said emails became clear to her only after the cross examination of P.W.1 and are in relation to her efforts to answer the case put up by the Plaintiffs in the cross examination of P.W.1, she could not produce it earlier. In addition, since the said emails were not in her custody or power and remained with her husband, she had no occasion to produce it earlier. Since the reasons for non production of the said emails is bona fide and for reasons beyond her control, she have filed the present application.

12. The above emails are critical to answer the case of the Plaintiff which is put up by the Plaintiff for the first time only during the cross-examination of P.W.1. Therefore, if she is not allowed to produce the said emails in the course of her evidence, it would deprive her of a fair opportunity to

contest the plaintiffs case under the principles of natural justice and thus result in grave injustice and consequential harm. However, no harm or injury would be caused to the Plaintiff if the above emails are produced. Therefore, it is just and necessary to allow the accompanying application in the interest of justice and equity.

The summary of the objections of the plaintiff is as under:

13. The application filed by the Defendants is not maintainable either in law or on facts and hence, same is liable to be dismissed in limine.

14. The emails which are now purported to be produced were not produced along with written statement and also they had sufficient time to produce said emails, but despite of the opportunities to produce the same, defendants did not produce them earlier as required under the Commercial Courts Act but now defendants have come up with the application to produce the emails which is not sustainable both in law and on facts and hence, are liable to be rejected in limine.

15. The application I.A. No.7 filed under order XI rule 1(7)(c) ii) R/w. Section 151 of Code of civil procedure by the Defendant seeking permission to permit the Defendants to

produce the Email dated 04.04.2015 and 20.04.2016 is frivolous and malafide and is neither maintainable either in law or facts, hence the application filed by the Defendant is liable to be dismissed as the documents are being introduced for the 1st time which on face of it without prejudice to the rights of this Plaintiff or admitting to the same and more so the said documents are created and the chain of custody of such documents which are not property of either of the Defendants unless the said docs are illegally created at hands of Defendants.

16. In the affidavit supporting the present applications, the defendants have not established any reasonable cause for non-production of the documents at the time of filing written statement & Additional Written Statement but in the Affidavit sworn to in the Affidavit by Defendant No.1 i.e., Smt.Vijaya Shivakumara Swamy W/o. Shivakumara Swamy.S at para No.4 "the said emails were in the mailbox associated with the email address shivakumar 28573@yahoo.com, which belongs to my husband Mr. Shiva Kumara Swamy, who was formerly an employee of the Plaintiff Officials.....
... .Accordingly, Mr. Shiva Kumara Swamy after searching thorough his records discovered the said emails which he then printed and handed over to me". Hence the application is liable to be rejected on this ground alone with liberty to file a criminal prosecution against the Defendants.

17. Further at Para No.5 of the affidavit, the Deponent states that, "I could not produce the aforesaid emails along Further since the relevance of the said emails became clear to me with my written statement and additional written statement. only after the cross examination of PW1 andI could not produce it earlier. In addition, since the said emails were not in my custody or power and remained with my husband, I had no, " the Defendants they themselves admit that they could not produce the aforesaid emails along with written statement and additional statement, Hence it is very clear, that the Defendants intentionally for the first time taking a new false story and fabricating the Emails, hence the same is liable to be dismissed in limine.

18. The emails which are now purported to be produced were claimed to be in the custody of husband of D.W.1, In view of the said admission it is clearly established that the defendants were always in the control and custody of the said documents and yet the same were not produced before this Hon'ble Court. The defendants having failed to exercise due diligence, cannot now seek to produce additional emails at such a belated stage and hence the applications are liable to be rejected especially when they are created and illegally produced.

19. The Defendants are required to produce all the documents supporting their case along with the Written statement itself as mandated under order XI rule 1 (7) (c) (ii) Commercial courts Act 2015. The Defendants having failed to produce these Documents at the time of filing the written statement, and the Defendants being unable to attribute any cause to the enormous delay in producing the same, are precluded from doing so at this belated stage.

20. In view of the mandatory provisions of order XI Rule 1(10) of the CPC as amended by the commercial courts Act, the Defendants shall not be allowed to rely on the Emails dated 04.04.2015 & 20.04.2016," which were in the Defendants Power, Possession, Control & Custody and not disclosed along with the Written Statement or Additional written Statement or counter claim, save and except with the leave of the court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or additional Written statement or counter claim". A perusal of the affidavits supporting the applications, does not in any manner disclose any reason as to why the said Emails were not produced by the Defendants, at the time of filing of Written Statement or at the time of filing Additional Written Statement or counter claim, although the said documents were in their possession. In View of the same the present application is liable to be dismissed.

21. By filing the present application, the Defendants are only trying to frustrate the Plaintiff company by dragging on the above suit, by filing frivolous applications and not contest the case on merits. The Defendants are seeking to produce the said emails dated 04.04.2015 & 20.04.2016 at this belated stage, when the Defendants have cross-examined the Plaintiff i.e., PW-1 and now the matter is listed for Defendants Examination.

22. In the affidavit supporting the present application the Defendants have not established any reasonable cause for non-production of the emails at the time of filling written statement or Additional Written Statement. Hence this application is liable to be rejected on this ground with exemplary costs for sheer abuse of the process of the Hon'ble court.

23. The Documents which are now purported to be produced were admitted to be in the power, possession and custody of the Defendants. The Defendants have admitted that these emails dated 04.04.2015 & 20.04.2016 were in possession of the Defendants. In view of the said admission made in the Affidavit deposed by the Defendant, it is clearly established that the Defendants were always in the power, possession, control and custody of the said documents and yet the same were not produced before this

Hon'ble court. The Defendants have failed to exercise due diligence, cannot now seek to produce emails dated 04.04.2015 & 20.04.2016 at such a belated stage and hence the application is liable to be rejected.

24. Without prejudice to the contention that the said documents ought to have been produced along with the Written Statement, the Defendants on various occasions also had the opportunity of producing the documents that are now enlisted in the list of documents however for reasons best known to the Defendants, they have withheld the documents now sought to be filed along with the above application. The Defendants ought to have produced enlisted documents at least during the case management hearing of the above suit or at the time of filing the statement of admissions and denials which statement was filed by the Defendants. It is therefore forthcoming that the Defendants, only with an intention to overcome the lacunae in their case, are now seeking to produce the said additional documents, contrary to the provisions of Commercial courts Act, with absolutely no plea as regards to the said documents being filed at this belated stage.

25. The Defendant No.1 .e., Smt.Vijaya Shiva Kumara Swamy Deposed in Para No.4 & 5 of the Affidavit to the application and Affidavit Deposed to 65(b) of Indian Evidence Act is contrary to law, hence on this Sole ground

alone, the application filed by the Defendant is liable to be dismissed in limine.

26. The provisions under order XI have been included specifically for commercial court case, here the reliance is largely if not solely on documentary evidence rather than on oral evidence. Therefore, it will be wholly unjust to allow the Defendant to go back on their own affidavit on oath to allow documents to be taken on record by recalling the witness at this late stage.

27. The Defendants have not even made an application praying for the leave of this Hon'ble court to produce further documents which is the stated purpose of production of documents till date. The Defendants have not shown any cause let alone reasonable cause for not having filed the documents earlier. Therefore the application filed by the Defendants is liable to be rejected on these Grounds.

28. As regards to Para No.6 & 7 the Plaintiff would not only be put to great prejudice, hardship and injury, if the Defendants are allowed to produce the emails dated 04.04.2015 and 20.04.2016, the very object with which the various provisions of the commercial courts act, 2015 have been introduced will be defeated. Hence, the application may be dismissed with exemplary cost.

29. I have gone through the materials available on record. In this case the plaintiff is contending that the application filed by the defendants is not maintainable as they are seeking production of documents at the very belated stage of the proceeding. The defendants have failed to comply with the mandatory requirements of Order XI Rule 1 i.e., the production of the documents along with the written statement or 30 days thereof. Hence, the application is liable to be dismissed.

30. As against this contention, the defendants are contending that they came to know about the documents i.e., emails subsequent to the filing of written statement and during the course of cross-examination of PW.1 the plaintiff has taken up a plea that Ms.Preeti is actually a Administrative Coordinator and not sales representative. Since the plaintiff has set up a new plea subsequent to the filing of plaint they are entitled to produce the emails now sought to be produced.

31. A careful consideration of Order XI Rule 1(7)(c) shows that a defendant is entitled to produce the documents in answer to any case set by the plaintiff subsequent to the filing of plaint. In this case also the defendants have filed IA No.7 seeking production of emails in response to the plea taken up by the plaintiff. The defendants have explained that they were not in possession

of the documents and the applicant Smt.Vijaya Shivakumar has procured the same through her husband Mr.Shivakumar who was an ex-employee of plaintiff.

32. A party shall not be deprived of his valuable rights to get the adjudication of his rights on merits owing to technical grounds like belated production of documents. The documents sought to be produced by the defendants for the inspection of the Court would enable the Court to adjudicate upon matter in dispute effectively and completely. If the application is rejected the substantial right of the defendants to get their claim adjudicated on merits will be defeated.

33. The plaintiff has all the opportunities to cross-examine the DW1 and even adduce evidence contrary to the claim of defendants. Depriving a person from producing the documents on technical grounds is not a countenance in law. However, the inconvenience caused to the plaintiff has to be compensated by awarding suitable cost. The Defendants are liable to pay costs to the plaintiff to compensate the inconvenience caused to them by filing the present application. Accordingly, Point No:1 is answered in the **AFFIRMATIVE**.

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Com.OS.188/2019

34. **POINT No.2:** In view of the findings on Point No:1
I pass the following

ORDER

IA.No.7 filed under Order XI Rule 1(7)(c)(ii)
r.w.s. 151 CPC by the defendants is allowed.

The documents annexed to I.A.No:7 are
taken on record.

The defendants are directed to pay cost of
₹.2,000/- (Rupees Two Thousand only) to the
plaintiff.

(Dictated to the Stenographer, transcribed and typed by her,
then corrected and pronounced by me in the Open Court on this
14th day of February, 2023)

(S.J.KRISHNA)
LXXXIX ADDL.CITY CIVIL &
SESSIONS JUDGE, BENGALURU.
(CCH-90)

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