

KABC170079032020



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

THIS THE 23rd DAY OF MAY 2023

PRESENT:

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

I.A. NO. VI

IN

Com.O.S.No. 433/2019

BETWEEN:

**M/s Greenchef Appliances
Limited.**

: PLAINTIFF

AND

M/s Annai Traders.

: DEFENDANT

ORDERS ON I.A. NO. VI

The Plaintiff has filed I.A.No.VI under Order XI Rule 1(5)
read with Section 151 of the Civil Procedure Code, and

sought permission to produce the documents as mentioned in this application.

2. In the enclosed Affidavit, the Manager of the Plaintiff company and authorized person of the Plaintiff has stated on oath that, the defendant is their customer and has purchased goods on credit from time to time from 14.11.2017 to 04.09.2019 and as per the statement of account the defendant is due a sum of Rs.6,95,692/- towards principle and after denying the documents in the above case it is just and necessary to produce the document stated in the application for evidence purpose sicne the lorry receipts produced by him a xerox copies and original are with defendant and having denied it is just and necessary to produce the said documents which are downloaded.

3. The Defendant filed objections, stating that the Plaintiff is required to produce all the documents supporting his case along with the plaint itself as mandated under Order XI Rule 1 (5) of CPC read with Section 16 of Commercial Courts Act, 2015. The Plaintiff having failed to produce these documents at the time of filing the plaint, is unable to attribute the enormous delay in producing the same and is precluded from doing so at this belated stage. The documents which are now purported to be produced were

admitted to be in the power, possession and custody of the Plaintiff. Through a reading of the plaint, it may be observed that the Plaintiff has been in possession, control and custody of all the documents pertaining to the suit, yet did not produce the same along with the plaint. The Plaintiff having failed to exercise due diligence cannot now seek to produce additional documents and hence the applications are liable to be rejected. A perusal of the documents/application filed on 28.06.2022, titled as "MEMO" reveals that the Plaintiffs have not stated any reason as to why the documents were not produced at the time of filing the plaint, although the said documents were in their possession. In view of the same the present application is liable to be dismissed. Hence, he prayed to dismiss the application.

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 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.

R E A S O N S

7. Point No. 1: - Perused the records, this suit is filed for recovery of money. The plaintiff intends to produce the download the invoice copy E-way bill and delivery confirmation track and emails. The Plaintiff contention that as per statement of account the Defendant is due a sum of Rs.6,95,692/- towards principle and after denying of documents in above case it is just and necessary to produce the documents.

8. Perused the averments of the plaint wherein the Plaintiff has referred the invoice no 184558, 184346, 184423 and 184311.

9. The Advocate for the Defendant has relied upon a Judgment in Civil Appeal No. 5620/2021 dated 15.09.2021 (Sudhir Kumar @ S. Baliyan vs. Vinay Kumar G.B) the Hon'ble Supreme Court.

10. The learned Plaintiff has argued that the Defendant having denied the transaction credit invoices were marked and the I.R were xerox copies hence was not marked. The Plaintiff downloaded the LR along with E bill submitted to transporter and hence the documents sought to be produced or not any new documents but they are downloaded copies of LR and e way invoices bills and the originals were handed to defendant to take delivery. The defendant has admitted in written statement that the goods were being send by transport. No new documents are being produce and the emails produced are letters exchanged between Plaintiff and Defendants.

11. On perusal of the records it reveals that the Plaintiff has produced photo copy of invoices at the time of filing the suit and now he intend to produce the downloaded copy of the invoice which are contained the seal. The Plaintiff has intended to produce the e-way bill which are not produced earlier at the time of filing the suit. The Plaintiff contention that since the Defendant has denied the transaction. So, he has produced the e-way bill and delivery tracks downloaded copy.

12. In this regard I relied upon a decision reported in 2018 - S.C.C. Online - Guj - 1515 (State of Gujarat vs. Union of India) the Hon'ble Supreme Court held that:-

“ unless the court comes to a conclusion that the facts are so gross that the only inference that can be drawn from the conduct of the party is that the documents which are sought to be produced are manufactured, the court should not generally deny leave to produce documents because ultimately, it is always open to the other side to cross-examine the party who produces the documents to establish that the said documents are not relevant or that the case based on the said documents is not true. In our opinion and more particularly, considering the documents which are sought to be produced which are Government documents, at this stage, it is not possible to come to a conclusion that the documents sought to be produced are manufactures. However, that does not preclude the defendants, if they so desire, to cross-examine the plaintiffs and persuade the court to hold so. Therefore, in the facts and circumstances of the case, we are of the opinion that if the Plaintiffs are not permitted to produce the aforesaid documents, grave injustice is likely to be caused to the

Plaintiffs. Therefore, we are of the opinion that in the facts and circumstances of the case, the learned commercial court has failed to exercise jurisdiction vested in it, more particularly, contained in Order XII Rule 1 (5) of the CPC (applicable to the commercial court and the commercial disputes). On imposition of reasonable cost and subject to proving the same in accordance with law, the learned commercial court ought to have permitted the Plaintiffs to produce the documents sought to be produced vide list Ex.72 and ought not to have allowed the application Ex.71. Therefore, we are of the opinion that in the facts and circumstances of the case, interference of this court in exercise of powers under Article 227 of the constitution is called for”.

13. In the present case the Defendant has not produced the invoices and as above discussed Plaintiff has referred the invoices in the averments of the plaint and other documents which are pertaining to the suit transactions. So, on the strength of the above said decision by considering facts and circumstance of the case, I am of the opinion that if the Plaintiff is not permitted to produce the above said

documents grave injustice is likely to be caused to the Plaintiffs. I am of the opinion that the application is to be allowed. However, inconvenience caused to the Defendant be compensated by imposing cost. **Hence, I answer this Point No.1 in Affirmative.**

14. Point No.2 : Therefore, I proceed to pass the following Order.

ORDER

The I.A. No.VI filed by the Plaintiff under Order XI Rule 1(5) read with Section 151 of Civil Procedure Code, is hereby Allowed. By considering the delay cost of Rs. 3,000/-.

(Dictated to the Stenographer, typed by her directly on the computer, verified by me and pronounced in the open court on **23rd day of May 2023**).

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

The Orders on I.A.No.VI s pronounced in Open Court. The operative portion of the said Orders is as follows :-

ORDER

The I.A. No.VI filed by the Plaintiff under Order XI Rule 1(5) read with Section 151 of Civil Procedure Code, is hereby Allowed. By considering the delay cost of Rs. 3,000/-.

(vide my separate detailed Order dated 23.05.2022).

**For Plaintiff evidence.
Call on 07.06.2023.**

LXXXII ACCJ, B'LURU.