



\$~1

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 5/2022 & I.A. 34219/2024**

**PERNOD RICARD INDIA PVT.LTD.**

**.....Plaintiff**

Through: Mr. Ankit Virmani (through VC) with  
Ms. Ruchika Agarwala, Ms. Malvika  
Arya, Advocates

versus

**RAJ KUMAR & ANR.**

**.....Defendants**

Through: Mr. Deepak Jain, Ms. Anoushka  
Singh, Ms. Twinkle Gupta, Ms.  
Dashampreet Kaur and Mr. Sajal  
Gupta, Advocates for D-2

**CORAM:**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**ORDER**

**%**

**01.08.2024**

**CS(COMM) 5/2022**

1. Learned counsel for the defendant no. 2 states that by way of affidavit of admission/denial of documents, defendant no. 2 seeks an opportunity to place on record his stand only with respect to document no. 2 filed by the plaintiff i.e., the purported surety bond executed by defendant no. 2 in favour of the plaintiff. He states that defendant no. 2 is not concerned with any other document. He states that the sole basis of the plaintiff's claim against defendant no. 2 is the said purported surety bond.

1.1. He states that the document no. 2 bears the non-judicial stamp of the Haryana Government dated 31.03.2017 and allegedly bears defendant no. 2's signature at page nos. 1 and 2. He states that, however, it is a matter of official record that defendant no. 2 was in judicial custody as an under trial



in FIR No. 120/12/2015 for a continuous period of 01.02.2016 to 07.08.2019. He states that defendant no. 2 was an undertrial and he was not enlarged for an interim bail even for a single day. He states therefore it was impossible for the defendant no. 2 to have executed the aforesaid surety receipt in the year 2017. He has relied upon a custody certificate issued by the Jail authorities.

1.2. He states that in these facts, the contention raised by the plaintiff that this document no. 2 is deemed to have been admitted by defendant no. 2 due to his default in filing the affidavit of admission/denial of documents, will lead to travesty of justice.

2. Learned counsel for the plaintiff states that in the plaint it is stated that this document no. 2 was executed by defendant no. 2 in June, 2017. He states that the plaintiff will take appropriate steps to lead evidence to prove the execution of this document by defendant no. 2 during the course of his trial. He states that plaintiff is not resiling from its obligation to prove the documents. He states that even before the Division Bench in FAO(OS) (COMM) 92/2024, it has been observed that the plaintiff herein will prove its claim at trial.

3. In the considered opinion of this Court, in view of the facts stated by defendant no. 2 with respect to his judicial custody as an under trial in FIR No. 120/12/2015 during the relevant period when the document no. 2 is stated to have been executed, it has become incumbent upon the plaintiff to explain in what circumstances was document no. 2 executed by defendant no. 2. The defendant no. 2 has relied upon a custody certificate which is an official document issued by a public officer under Section 74 of the Indian Evidence Act, 1872 and cannot be ignored by the Court. The plaintiff cannot



seek a default judgment against defendant no. 2 under Order VIII Rule 10 of the Code of Civil Procedure, 1908 (CPC) on the basis of deemed admission of document no. 2, until he satisfies the judicial conscience of this Court with respect to the due execution of the Surety Bond filed as document no. 2. Further, even before the Division Bench, the plaintiff has conceded that it will prove its case on merits by leading evidence at trial and therefore there cannot be any presumption of admission qua document no. 2. It is clarified that the plaintiff will prove to the satisfaction of the Court due execution of the document no. 2.

4. It is clarified, no further leave is reserved to defendant no. 2 to file affidavit of admission/denial of documents as it already stands closed.

5. However, the custody certificate of defendant no. 2 is taken on record and it is clarified that the plaintiff will be at liberty to summon the record from Central Jail, Ferozepur, Punjab - 152002 to verify the correctness of the custody certificate produced by defendant no. 2.

6. Learned counsel for the plaintiff states that he will file his affidavit by way of evidence within a period of six weeks.

7. List before the Joint Registrar (J) for recording of evidence on 03.10.2024.

**MANMEET PRITAM SINGH ARORA, J**

**AUGUST 1, 2024/msh/ms**