

IN THE HIGH COURT AT CALCUTTA

ORDINARY ORIGINAL CIVIL JURISDICTION

ORIGINAL SIDE

[COMMERCIAL DIVISION]

Present :

THE HON'BLE JUSTICE ARINDAM MUKHERJEE

IA No.GA 4 of 2023

In

CS-COM 242 of 2024 (Old C.S. No.33 of 2021)

RASANDIK ENGINEERING INDUSTRIES INDIA LIMITED

VS.

WEST BENGAL INDUSTRIAL DEVELOPMENT CORPORATION LIMITED & ANR.

For Petitioner

: Mr. Soumabho Ghose,
Ms. Tiana Bhattacharya,
Mr. Soumitra Datt

.....Advocates

For the State

: Mr. Priyankar Saha,
Mr. Paritosh Sinha,
Mr. Arindam Manda

..... Advocates

Last Heard on

: 29.02.2024 & 10.05.2024.

Judgment on

: 25th June, 2024.

Arindam Mukherjee, J:

- 1). The petitioner as the plaintiff has filed this instant suit being C.S. No. 33 of 2021 (Rasandik Engineering Industries India limited vs. West Bengal

Industrial Development Corporation Limited & Anr.) in the Commercial Division of this Court for recovery of a sum of Rs. 205,53,24,702/- said to be due and payable by the respondents to the petitioner.

- 2). After filing of the written statement by the defendants, on 9th November, 2022 this Hon'ble Court was pleased to direct that discovery and inspection be completed by 15th December, 2022 and accordingly directed the petitioner being the plaintiff to file the Judge's brief of documents.
- 3). The petitioner could not complete the process of discovery and as such could not also give inspection of documents within the stipulated period as directed by the order dated 9th November, 2022. The petitioner as the grounds for being unable to disclose documents has stated in this application that the documents to be disclosed are voluminous and the petitioner was required to disclose fresh documents which have not been disclosed with the plaint. The petitioner also says that these documents could not be disclosed earlier at the time of filing of the suit in spite of best efforts of the petitioner.
- 4). The plaintiff/petitioner also says that the suit has not reached the stage of evidence and as such no prejudice will be caused to the defendants/respondents if the documents now sought to be disclosed are permitted to be disclosed by the Court. The documents are also necessary for effective adjudication of the suit.
- 5). The documents which the petitioner seeks to disclose may be segregated into two parts. The first set of documents is dated prior to filing of the instant suit.

The second set of documents comprise of documents post filing of the instant suit.

- 6). So far as the documents which are subsequent to the date of institution of this suit were not in possession or custody of the plaintiff/petitioner and as such could not be disclosed along with the suit. So far as the documents prior to the institution of the suit are concerned, these are third party documents which were overlooked at the time of instituting the suit as the same had been filed in hot haste and there was no mala fide intention on the part of the plaintiff/petitioner to withhold such documents. At the end, as submitted by the plaintiff/petitioner, these documents are required to be proved on being allowed to be disclosed in the event the plaintiff/petitioner has to succeed. The defendants/respondents shall, therefor, have ample opportunity to deal with such documents.
- 7). In the aforesaid circumstances the petitioner has taken out the instant application praying for leave to disclose documents that could not be disclosed earlier along with the plaint at the time of instituting the present suit.
- 8). On behalf of the defendants/respondents separate submissions have been made however, the sum and substance of the submissions made by the two defendants can be summarized as follows:
 - i) The defendants/respondents on the basis of the documents disclosed with the plaint and the averments made therein have filed their written statements. In the written statement, the defendants/respondents have

disclosed their respective stand in relation to the documents disclosed and the averments made in the plaint. The defendants/respondents have also disclosed with their written statements the documents they intend to rely. After considering the written statement and the documents disclosed therewith to the plaintiff/petitioner in order to fill the lacuna has sought to disclose additional documents. In the event, these documents are disclosed, the interest of the defendants/respondents shall be seriously prejudiced as they have already made out their defence.

- ii) The suit as will appear from the averments made in the plaint arise out of a commercial dispute. The suit, therefor, has been filed in the Commercial Division of this Court. In view of the provisions of the commercial Courts Act, 2015 (hereinafter referred to as 2015 Act) read with the amended provisions of the Code of Civil Procedure, 1908 (in short CPC) as applicable to commercial suits, the plaintiff/petitioner was required to disclose all the documents in their custody and possession as no contrary statement has been made in the petition. So far as the documents which are dated prior to the institution of the suit, the same were in the absence of any contrary statement has to be prescribed to be in the custody of the plaintiff/petitioner. The plaintiff/petitioner, therefor, was obliged to disclose the same and state about the particulars thereof in the page appended to the plaint required to be filled up providing the details of the document under the amended provisions of Order 11 of CPC. It is not the case of the plaintiff/petitioner in regard to these documents that the same were not in the custody of the plaintiff/petitioner as such the same could not be disclosed with the

plaint. In any event, the plaintiff/petitioner has not stated while instituting the suit that these documents were not in their possession or custody.

- iii) The plaintiff/petitioner was obliged to state about the documents dated prior to the institution of the suit in the declaration on oath required to be filed in connection with a commercial suit. The plaintiff/petitioner has also not stated about these documents in such declaration on oath.
- iv) So far as the post-suit documents are concerned, unless the plaint is amended, the plaintiff/petitioner cannot disclose such documents. The defendants/respondents have cited a judgment reported ***in 2021 13 SCC 71 2021 (13) SCC 71 [Sudhir Kumar v. Vinay Kumar G.B.]*** in support of their contention that the additional documents should not be allowed to be disclosed. Relying upon such judgment, the defendants/respondents say that the instant application should be dismissed and the plaintiff/petitioner should not be permitted to disclose additional document.
- 9). After hearing the parties and considering the materials on record, I find that there has been a procedural change brought in respect of suits filed in the Commercial Division of this court and the suits filed in the Ordinary Original Civil jurisdiction of this court. In case of a suit filed in the Ordinary Original Civil jurisdiction of this court the procedure laid down in Order 7 Rule 14 read with the provisions of Order 11 of the CPC is applicable along with the provisions of Chapter 11 of the Original Side Rules of this Court. In case of a suit filed in the Commercial Division, the amended provisions of Order 11 of the 2015 Act are required to be complied with which have been made applicable exclusively for Commercial suits.

- 10). The provisions of Section 16 of the 2015 Act have clearly indicated the overriding effect of the said Act over other procedural law in case of the procedure laid down in the said Act which includes the amendment brought to certain provisions of the CPC. In case of a suit in the Ordinary Original Civil jurisdiction, documents which were required to be produced with the plaint at the time of institution on having not been so produced could be disclosed with the leave of Court in view of the provisions of Order 7 Rule 14 (3) of the CPC. However, in case of commercial suits which include suits filed in the Commercial Division of this Court, the amended provisions of Order 11 have brought out more stringent compliance for disclosing additional documents. Ordinarily, documents which are not disclosed with the plaint, in case of commercial suits shall not be allowed to be disclosed except under the provisions of Order 11 Rule 1 (4) and Rule 1(5) of the CPC as applicable to the commercial suits. The legislature has by introduction of the provisions of Order 11 Rule 1(4) and Rule 1(5) of the CPC has made a distinction between such provision and the provisions of Order 7 Rule 14 (3) of CPC. In view of suits in the Ordinary Original Civil jurisdiction, a mere leave of the Court is required to disclose additional document. Documents in case of such suits can be disclosed at any stage even during the trial. The leave, however, is at the discretion of the Court. However, in view of the provisions of Order 11 Rule 1 (4) and Rule 1(5) of the CPC as applicable to commercial suits, the leave is qualified. The plaintiff/petitioner in case of Order 11 Rule 1(4) of CPC has to satisfy that there was urgent filing of the suit and the additional documents are to be disclosed within 30 days of filing of the suit upon obtaining leave of Court. Order 11 Rule 1(5) of CPC also stipulates that the

plaintiff/petitioner shall not be allowed to rely on documents which were in the plaintiff/petitioner's power, possession, control or custody and not disclosed along with the plaint or within the extended period under Order 11 Rule 1(4) of CPC save and except by leave of Court and such leave shall be granted only upon the plaintiff/petitioner establishing reasonable cause for non disclosure along with the plaint. The procedure to disclose additional document in case of a Commercial Suit is very stringent but the same is not absolutely prohibited.

- 11). On considering the case of the plaintiff/petitioner in the light of the discussion as aforesaid, it is apparent that the plaintiff/petitioner could not have disclosed the documents which are subsequent to the filing of the suit along with the plaint or even within 30 days from the institution thereof as required under Order 11 Rule 1(4) of CPC as they are also beyond such period. The provisions of Order 11 Rule 1(5), therefor, will be applicable in such a case. This Court is satisfied that the plaintiff/petitioner has established reasonable cause for non-disclosure of such document along with the plaint and as such these documents should be allowed to be disclosed.
- 12). The argument advanced by the defendants/respondents that without the amendment, the post-suit documents cannot be relied upon is also not acceptable at this stage as the Court is not concerned with the amendment of the plaint. It is for the plaintiff to decide whether they will amend the plaint or not. The law as to evidence being laid de hors the pleadings is well-settled. The defendants/respondents, therefor, will be free to object to additional documents being allowed to be relied upon at the time of trial or can argue

that the evidence on the basis of these additional documents are beyond the pleadings and should not be considered. No prejudice, therefor, will be caused to any of the defendants in the event these documents are allowed to be disclosed.

- 13). So far as the documents which are dated prior to the institution of this suit are concerned, the plaintiff/petitioner was required to come within 30 days from the date of institution of the suit to seek leave of this Court to disclose such documents upon establishing that the suit was urgently filed resulting in these documents having been over looked for the purpose of disclosing them with the plaint. The plaintiff/petitioner has not done so. The exception carved out under the provisions of Order 11 Rule 1(5) of CPC has also not been satisfactorily meted in the instant case as there is cogent ground establishing reasonable cause for the non-disclosure along with the plaint has been stated. On a perusal of the documents, which are prior to the date of institution of the suit, it is, however, found that these are third-party documents being mainly invoices raised on the plaintiff/petitioner. Even if the plaintiff/petitioner is not permitted to disclose these documents then also by laying down the foundation to lead secondary evidence and thereafter by issuing subpoena the plaintiff/petitioner can have these documents produced in Court and evidence laid on the basis thereof as envisaged under the provisions of Order 16 Rule 6 and 7 of the CPC. The defendants/respondents in such a case will not be able to stop these documents from entering the records of evidence thereof being laid. The leave to disclose this set of documents will also cause no prejudice to the defendants/respondents as the

suit has not reached the stage of admission and denial of the documents. The defendants/respondents will be in a position to comment on these documents at the time of admission and denial thereof. There is as such no justifiable ground to deny leave to the plaintiff/petitioner to disclose these documents in view of the aforesaid. Even if the provisions of Order 11 Rule 1(4) and Rule 1 (5) are not strictly complied with.

- 14). The leave to disclose the additional documents is also granted in order to effectively adjudicate the dispute and to do complete justice to the parties.
- 15). So far as the judgment in Sudhir Kumar (supra) as cited by the defendants is concerned does not apply to the facts of the instant case. The suit in Sudhir Kumar (supra) was in connection with intellectual property where documents are to be disclosed to form the basis of the pleading. In absence of documents being disclosed in such a suit, the cause of action to seek the relief(s) cannot be made out. The suit in hand is for recovery of money, the fact of which is pleaded in the suit. The additional documents are sought to be disclosed in furtherance of the proof and as such does not go to the root as in case of suits under intellectual property. There is as such no dispute as to the ratio laid down in Sudhir Kumar (supra) but the same is not applicable to the facts of this case in the light of the discussion as aforesaid.
- 16). The plaintiff/petitioner is permitted to disclose the additional documents as indicated in this application along with a declaration on oath that the plaintiff/petitioner has disclosed all document in its power, possession, control or custody pertaining to the facts and circumstances of the proceeding

initiated by the institution of the suit and that the plaintiff/petitioner does not have any other documents, in its power, possession, control or custody.

17). The application is accordingly allowed.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.

(ARINDAM MUKHERJEE, J.)