

In the High Court at Calcutta
Commercial Division
Original Side

Judgment (2)

PRESENT :
THE HON'BLE JUSTICE ANIRUDDHA ROY

IA No. GA-COM/4/2025
[Old No. CS/204/2019]
In CS-COM/162/2024

MASCOT PETROCHEM PRIVATE
LIMITED
VS
SCIDPL AND VE (JV) AND ORS.

For the plaintiff : **Mr. Sourojit Dasgupta, Adv.**
 Mr. Vikash Baisya, Adv.
 Ms. Ranjana Seal, Adv.

For the defendants : **Ms. Hashnuhana Chakraborty, Adv.**
 Ms. Neelina Chatterjee, Adv.
 Ms. Sudha Singh, Adv.

Heard on : **November 19, 2025**

Judgment on : **November 19, 2025**

ANIRUDDHA ROY, J :

FACTS :

1. This is an application filed by the defendants with a prayer that the defendants be permitted to disclose certain additional

documents which were neither made part of the written statement nor have been disclosed by the defendants.

2. The prayers from the Notice of Motion are quoted below:

- “(a) Delay, if any in making the instant application be condoned;*
- (b) Leave be granted to the Defendants No. 1 to 6 to disclose the documents, being Annexure –‘K’ hereof by filing additional Judge’s Brief of Documents.*
- (c) Appropriate Orders be passed for discovery and inspection of the documents, being Annexure –‘K’ hereof;*
- (d) Necessary orders as to costs;*
- (e) Such further and/or other orders or orders be made and/or direction or directions be given as to this Hon’ble Court may seem fit and proper”*

3. The plea taken by the defendants in support of their claims are stated in the petition. The relevant portion is quoted below:

- “16) At the time of preparation of the affidavit of examination in chief of the defendants' witness, the following transpired: -*
- a) In order to substantiate the case of the defendants that short supply of materials were made by the plaintiff to the defendants, the defendants were relying upon weigh bridge slips and/or kata slips annexed to the invoices raised by the plaintiff upon the defendants. Most of the weigh bridge slips and/or kata slips which were being relied on by the defendants had been disclosed court by the plaintiff and the defendants in the judges brief of documents.*

- b) *It, however, came to the notice of the defendants' witness that some of the invoices disclosed did not have the weigh bridge slips and/or kata slips appended to them. Mrs. Sudipa Saha the Junior Engineer of the defendants who was entrusted with looking after the legal cases of the defendants including the above suit had left the services of the defendants on or about November 30, 2024 and as such the issue as to why the weigh bridge slips and/or kata slips had not been annexed to some of the invoices could not also be clarified from her. However, since the Defendants' witness had personally dealt with the matter he was aware that weigh bridge slips and/or kata slips were appended to all the invoices. A list of the invoices which did not have the weigh bridge slips and/or kata slips appended them is annexed hereto and marked as Annexure "K".*
- c) *The defendants' witness Mr. Kanak Changlani conducted extensive search at the various offices of the defendants including at its office at 16/4, Mandol Temple Lane, Vinayak Apartment, 1st Floor, New Alipore, Kolkata 700053. After extensive search, the original weigh bridge slips and/or kata slips appended to the invoices mentioned in Annexure 'K' hereof were discovered at the said office premises.*
- d) *Particulars of the weigh bridge slips and/or kata slips which had not been disclosed earlier and which the Defendants No. 1 to 6 are seeking leave to disclose in the Annexure 'K'. Copies of the aforesaid weigh bridge slips and/or kata slips with the invoices are annexed hereto and collectively marked as Annexure - "L".*
- e) *All the above mentioned weigh bridge slips and/or kata slips had been appended to the invoices which had been served*

upon the Defendants and which have already been disclosed by both the plaintiff and the Defendants.

f) The aforesaid weigh bridge slips and/or kata slips are extremely relevant for the purpose of determining the actual weight of the material supplied and are, relevant documents and therefore, pertinent adjudication of the above suit."

4. The application has been opposed by the plaintiff. Parties have filed and exchanged their affidavits. Objection raised on behalf of the plaintiff would be available from the affidavit-in-opposition which are, inter alia, quoted below:

"4. Without prejudice to the above, I say that the said application is also not maintainable and/or impermissible in the facts of the present case. The defendants have sought to file this application for the purpose of disclosing further documents, which have been annexed as Annexure 'K' to the said application. In paragraph 16 of the said application, the defendants have sought to explain the reasons for not disclosing the said documents at the time when the written statement was filed by the defendants. Admittedly, the trial of the instant suit has commenced and the evidence of the plaintiff has already been concluded.

5. *Thus, in view of the restrictive and/or prohibitive provisions of the Commercial Courts Act, 2015 amending the provisions of the Code of Civil Procedure, 1908, no documents as sought by the defendants can be permitted to be disclosed in the instant suit. There is also no foundation pleaded in the written statement, which supports the documents which the defendants*

have now sought to introduce in the instant suit. Thus, the defendants have no right to disclose or produce the said documents in the instant suit in any manner. As such, the said application deserves to be dismissed.

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8. *With reference to the allegations made in paragraph no. 16 of the said application, save and except what are matters of record and what would specifically emanate therefrom, I deny and dispute each and every allegation made therein. It is denied that the defendants have any material to substantiate the case pleaded in the written statement. It is denied that there was any short supply of materials. By their own admission, the defendants have stated that it is only after the evidence of the plaintiff was concluded, that the defendants wanted to introduce the new documents. The same is not permissible in law. It is denied that any Junior Engineer of the defendants was entrusted with looking after the matter. It is denied that the entrusted person left the services of the defendants on 30th November, 2024, or the same is a reason for not disclosing the new documents along with the written statement. The defendants have also admitted that the new documents were also in possession of the defendants. Such fact would be evident from the averments made in paragraph 16(c) of the said application. The defendants have admitted that they found the new documents at their office premises itself. It is denied that any of the new documents are extremely relevant for the purpose of determining the actual weight of the materials supplied."*

5. Defendants have not yet submitted its evidence on affidavit. Examination-in-chief of the sole witness of the plaintiff has been complete, who has also been cross-examined already. At this stage, the instant application has been filed.

SUBMISSIONS :

6. Ms. Hashnuhana Chakraborty, learned Counsel appearing for the defendants/applicants relying upon the amended provisions laid down under **Order XI Rule 1 to the Code of Civil Procedure (CPC)** submits that in view of the promulgation of the **Commercial Courts Act, 2015** (for short '**CC Act**') the amendment had taken place in **CPC**.
7. Referring to **sub-Rules (9) and (10) to Rule 1 of Order XI of CPC** as amended, she submits that even if the documents referred to in her application are found to be throughout in the custody and control of the defendants, then also there is no absolute bar in disclosing those documents by way of additional documents, subject to the leave granted by Court.
8. Learned Counsel Ms. Chakraborty then with further reference to the relevant rules under **Order XI of CPC** submits that if the Court is satisfied with the explanation and the reasons shown by the defendants to be bona fide, just or cogent, the Court can grant leave to the defendants to disclose the additional

documents. In support, she has relied upon the following judgments of the Hon'ble Supreme Court:

- i. In The Matter of: Sudhir Kumar alias S. Baliyan vs. Vinay Kumar G.B.** reported at **(2021) 13 Supreme Court Cases 71;**
- ii. In The Matter of: Sugandhi (Dead) by Legal Representatives & Anr. vs. P. Rajkumar represented by His Power Agent Imam Oli** reported at **(2020) 10 Supreme Court Cases 706;**

- 9.** She further submits that the foundation of the additional documents now sought to be relied upon by the defendants are already there in the written statement filed by the defendants.
- 10.** In the light of the above, Ms. Hashnuhana Chakraborty, learned Counsel appearing for the defendants submits that this application should be allowed.
- 11.** Par contra, Mr. Sourojit Dasgupta with Ms. Ranjana Seal, learned Advocates appearing for the plaintiff submits that the defendants' case is throughout that the documents which are now sought to be disclosed as additional documents, were all along in the possession and custody of the defendants. Had those documents been so important to the defendants, the defendants should have exercised their due diligence on those and could have disclosed them with the written statement which is a statutory provision under the law after promulgation of **CC**

Act. A mandatory declaration is also required to be made by the defendants while filing written statements, if some documents are not disclosed with the written statement whether they are under the custody and possession of the defendants. The declaration made in the written statement also does not show that these additional documents which are sought to be relied upon now, were not within the custody and possession of the defendants.

12. Referring to the statements made in the application filed by the defendants, Mr. Dasgupta submits that no sufficient cause has been made out so that this Court can exercise its discretion and grant leave to the defendants to disclose these additional documents. In support, Mr. Dasgupta has placed reliance upon a decision of a coordinate Bench of Delhi High Court ***In the matter of: Great Gatsby Club of India vs. Mahesh Prefab Pvt. Ltd.*** reported at **2022 SCC OnLine Del 2099**.
13. In the light of the above, learned Counsel for the plaintiff prays for dismissal of this application.

DECISION :

14. After considering the rival contentions of the parties and on perusal of the materials on record, it appears to this Court that, the guiding provisions necessary for adjudication of

the instant application are **Sub-rules (9) and (10) to the amended Order XI Rule 1 of CPC** which are quoted below:

“.....

(9) The written statement or counter-claim shall contain a declaration on oath made by the deponent that all documents in the power, possession, control or custody of the defendant, save and except for those set out in sub-rule 7(c)(iii) pertaining to the fact and circumstances of the proceedings initiated by the plaintiff or in the counter-claim, have been disclosed and copies thereof annexed with the written statement or counter claim and that the defendant does not have in its power, possession, control or custody, any other documents.

.....

(10) Save and except for sub-rule 7(c)(iii), defendant shall not be allowed to rely on documents, which were in the defendant's power, possession, control or custody and not disclosed along with the written statement or counter-claim, save and except by leave of Court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or counter-claim.

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15. The defendants want to disclose certain weigh-bridge slips and/or other connected slips. The case made out in the application is that most of the weigh-bridge slips or kanta slips which were being relied on by the defendants had already been disclosed by the plaintiff and the defendants and are available in the suit records. It, however, has come to the notice of the defendants that some of such invoices disclosed by the parties did not have the weigh-bridge slips or kanta slips appended to them. The concerned Junior Engineer of the defendants, who was entrusted to look after the legal cases of the defendants including the instant suit had left the employment on or about November 30, 2024 and, as such, the documents could not be looked upon while preparing disclosure of documents on behalf of the defendants. When the defendants' witness personally dealt with the matter, after searching the records and after going through it, these additional documents were found to be there in the records but not disclosed in the suit records. The statements in the application have been denied by the plaintiff in its affidavit-in-opposition.

16. On a meaningful reading of **Sub-rules (9) and (10) to rule 1 of Order XI of CPC**, it appears to this Court that, depending upon

the fact situation, if the Court is satisfied with the explanations offered before the Court, that non-disclosure of the documents is not an act of suppression or deliberate or mala fide but owing to a bona fide act, then upon the defendants establishing reasonable cause for non-disclosure of these documents, the Court has ample authority and jurisdiction to grant leave to the defendants for such additional disclosure subsequently. Sub-rules (9) and (10) also do not specify beyond what stage of hearing of the suit such subsequent disclosures are not permitted. On a meaningful and harmonious reading of the provisions, this Court is of the firm view that there is no absolute bar on the part of the defendants for not disclosing relevant documents subsequently, but of course, subject to satisfaction of Court and upon leave being granted by the Court in this regard.

- 17.** Right to defend a claim by a party against whom the claim is lodged in an adversarial litigation, is a vested right which is recognized by both substantive and procedural laws, unless specifically excluded. To defend a claim, the defending party should be granted opportunities to avail all the procedures established by law. This is also in conformity with the elementary principle of natural justice. Therefore, unless the explanation offered by the defendants is totally illusory,

moonshine, prima facie contrary to records and fraudulent, the explanations can be accepted by the Court as sufficient reasons.

18. In the matter of: Sudhir Kumar (supra) the Hon'ble Supreme Court had held upon sufficient cause being shown the power is conferred with the Court to allow to disclose documents at a subsequent stage.

19. In the matter of: Sugandhi (Dead) (supra) the Hon'ble Supreme Court had observed as under:

“9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts, must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3).

10. Coming to the present case, the defendants have filed an application assigning cogent reasons for not producing the documents along with the written statement. They have stated that these documents

were missing and were only traced at a later stage. It cannot be dispute that these documents are necessary for arriving at a just decision in the suit. We are of the view that the courts below ought to have granted leave to produce these documents.”

20. The test is, as there is no absolute bar in law for disclosing documents at a subsequent stage, the Court is to examine and scrutinize the reasons shown by the applicants and if the reasons are found to be just and cogent, the Court in exercise of its discretion can grant leave for subsequent disclosure instead of depriving the defendants from an opportunity to defend its case to the fullest extent.
21. ***In the matter of: Great Gatsby Club of India (supra)*** an application was filed for extension of time to file written statement where the principles of **Order XI Rule 1(10) of CPC** has been discussed. The Court there having found no sufficient cause, the application was dismissed.
22. The finding of sufficient cause to be just and cogent is the perception of a Court and there is no straight jacket formula to arrive at such a finding. Perception may vary from Court to Court in the facts and circumstances of the case.
23. In view of the foregoing reasons and discussions, this Court is of the firm and considered view that the causes shown by the defendants in its application are found to be just and cogent and

hence, the defendants are allowed to disclose the documents positively within **two weeks** from date by following the due procedure of law. In so far as the provisions for taking inspection and discovery of documents are concerned, the parties shall be at liberty to do so in accordance with law and then the documents after being filed shall be taken on record as part of the suit records by the department.

- 24.** The application is allowed subject to payment of costs of **Rs.30,000/-** to be paid by the defendants in favour of the plaintiff which shall be the condition precedent for submission of additional documents.
- 25.** Accordingly, **IA GA-Com/4/2025** stands allowed, on the above terms.

(ANIRUDDHA ROY, J.)

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