



2025:DHC:908



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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **CS (COMM)169/2018 & I.A. 24360/2023**

**M/S. LEVITATE MOBILE
TECHNOLOGIES PVT. LTD.
THROUGH MR. SUNIL JASUJA
D-4, COMMERCIAL COMPLEX,
VASANT VIHAR
NEW DELHI-110070**

....PLAINTIFF

(Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Abhimanyu Garg, Mrs. Preety Makkar, Ms. Anshul and Ms. Ankita, Advocates.)

Versus

**M/S. STANDARD CHARTED BANK
1, BASIGHALL AVENUE,
LONDON EC 2V 5DD
ENGLAND
UNITED KINGDOM**

....DEFENDANT NO.1

**M/S. STANDARD CHARTED BANK
CRESCENZO BUILDING,
PLOT NO. C-38/39
BANDRA KURLA COMPLEX
MUMBAI - 400051**

....DEFENDANT NO.2

(Through: Mr. Ateev Mathur, Mr. Amol Sharma, Ms. Jagriti Ahuja, Advocates.)



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% Reserved on: 22.01.2025
Pronounced on: 12.02.2025

J U D G M E N T

I.A. 24359/2023 (application filed on behalf of the plaintiff seeking permission to place additional documents on record and recalling of plaintiff witness-1)

1. This is an application under Order XI Rule 1 and 5 read with Order XVIII Rule 17 and Section 151 of the Code of Civil Procedure, 1908 [‘CPC’] alongwith Section 138 of Indian Evidence Act, 1872 [‘Act of 1872’] seeking permission to place additional documents on record and recalling of plaintiff witness no.1.
2. At the outset, it is pertinent to have a brief sojourn over the controversy involved in the *lis*. The instant civil suit has been filed by the plaintiff company seeking a decree for recovery of a sum of ₹4,46,50,000/- along with interest @ 18% p.a. against the defendant-M/s. Standard Chartered Bank which is located in London, United Kingdom with its branch office in Mumbai.
3. The plaintiff is a company registered under the provisions of the Companies Act, 1956 and is dealing in the development, deployment and management of mobile and web-based solutions. The plaintiff claims to have the requisite skill, knowledge, experience and expertise in the field.
4. As per the plaint, in the year 2012, defendant no.1 through its branch office-defendant no.2, approached the plaintiff for the development and



management of a mobile application for catering to the online/M-commerce activities to be carried out by the defendants' credit and debit card customers.

5. The parties, after the exchange of certain correspondences, appear to have entered into an IT Professional Services Agreement dated 19.02.2013, whereby, the parties *inter alia* agreed, that the plaintiff would set up the infrastructure, collect data, develop and maintain the mobile application for the defendant no.1 on a review share model in accordance with the terms of the agreement. The mobile application was initially launched in the year 2013, however, after two months, the defendants asked the plaintiff to take down the application from all application stores. Ever since, certain disputes have arisen between the parties entailing them in exchange of various communications through e-mails etc.

6. The plaintiff claims to have suffered the loss of capital and resources, and a legal notice dated 15.04.2015 was served upon the defendants to pay a sum of ₹4,46,50,000/-. The defendants replied to the same on 15.05.2015 and refuted the claim raised by the plaintiff. The plaintiff, thus, instituted the instant civil suit in the year 2015.

7. After the completion of pleadings, the issues were framed on 16.11.2016 and evidence was commenced. On 07.08.2023, plaintiff witness No.1-*Shri Sunil Jasuja* completed his deposition. Thereafter, on 18.11.2023, the instant I.A. 24359/2023 came to be filed by the plaintiff.

8. By way of the instant application, the plaintiff seeks to bring on record three sets of documents i.e., (i) *e-mails exchanged between the plaintiff and defendants*, (ii) *the copy of the agreements entered between the plaintiff company and other vendors* and (iii) *backend data stored in servers*.



9. *Mr. Sudhir Nandrajog*, learned senior counsel, assisted by *Mr. Abhimanyu Garg* learned counsels, appearing on behalf of the plaintiff, submits that the instant application seeks to place on record the documents which are necessary in the interest of justice for a fair adjudication of the *lis* between the parties. He submits that additional e-mails that are sought to be placed on record as mentioned in Schedule A of the application, are either the trail mails of already exhibited e-mails by the plaintiff or the e-mails in response to the queries put forth by the defendants during the development of the mobile platform. According to him, those documents could not be placed on record earlier before this Court due to various reasons, which were mostly inadvertent and beyond the control of the plaintiff. The electronic records and data have been generated/ created across different platforms (email/application, stores, servers) and different formats (excel sheets, images/ documents, HTML, code files etc.). Further, it encompasses a wide timeline starting from the negotiation stage, prior to execution of the contract, to discussions on the scope of work of parties, followed by the correspondences between the parties for the execution of the agreement, and finally, the communications leading up to the dispute between the parties. He further submits that the quantum of e-mails exchanged between the parties is voluminous and difficult to keep track of, thus, they could not be filed at the time of presentation of the plaint.

10. In order to substantiate his submissions, learned senior counsel submits that the plaintiff is not setting up a new case and the Court should be lenient in allowing such an application, reserving the rights of the defendants to refute the veracity of those documents. He places reliance on a decision of this Court in the case of *Iffco Tokio General Insurance Co. Ltd.*



*v. Inder Traveles (P) Ltd.*¹, *Roots Cooling System (P) Ltd. v. Bipin Kumar Gupta*² and a decision of Andhra Pradesh High Court in *Penumatsa Anil Kumar v. State of A.P.*³.

11. Learned senior counsel further submits that in the case of *Penumatsa Anil Kumar* of Andhra Pradesh High Court, even after the examination of one of the witnesses by the plaintiff, such an application was allowed and, thus on the force of the said decision, he submits that the tools of procedure which are essentially the handmaiden of justice, should not come in the way of achieving the ultimate goal of justice and accordingly, subject to conditions, the instant application can be allowed.

12. *Per contra*, Mr. Ateev Mathur alongwith Mr. Amol Sharma, learned counsel appearing for the defendants, while opposing the application, submits that the suit itself was filed in the year 2015 and all these e-mails which were allegedly exchanged *inter se* parties were in the possession of the plaintiff since inception. On the force of said assertion, he submits that no reasonable cause has been established as to why the documents were not filed at the time of presentation of the plaint.

13. He further submits that even the issues were framed on 16.11.2016 and the plaintiff filed its first affidavit of evidence on 18.01.2017. The said affidavit was found to be defective and *vide* order dated 02.08.2017, the plaintiff was directed to file a fresh affidavit.

14. He also points out that in interregnum, the plaintiff filed I.A.12696/2017 seeking to place additional documents on record which, despite opposition, was allowed by the Joint Registrar on 30.01.2018

¹ 2024 SCC OnLine Del 5192.

² 2023 SCC OnLine Del 5507.

³ 2024 SCC OnLine AP 5533.



permitting those documents to be taken on record subject to the payment of a cost of ₹10,000/-. He points out that similar reasons were assigned in the said application as well for the non-production of documents along with the plaint.

15. He further points out that the plaintiff was examined and cross-examined on various dates before the Local Commissioner and finally, the cross-examination was concluded on 09.05.2023. He submits that since then, the plaintiff has been unable to produce the second witness and realised that in the evidence of PW1, there were serious lacunas, therefore, in order to fill up those lacunas, the plaintiff has filed the instant application and that too at a point, when the defendants have already opened their defence.

16. To buttress his submissions, he has placed reliance on the case of *Zee Entertainment Enterprises Ltd. v. Saregama India Ltd.*⁴ and has contended that the use of the word ‘*establishing*’ conveys that there should be something more than a mere explanation for the non-production of documents along with the plaint.

17. I have learned counsel appearing on behalf of the parties and have perused the record.

18. Before advertng to the merits of the case, at the outset, it deserves to be noticed that the instant civil suit was filed in the year 2015 as an ordinary civil suit which was governed by the provisions of the CPC. However, with the advent of the Commercial Courts Act, 2015 [‘**Act of 2015**’], which came into force on 23.10.2015, the Parliament provided for the constitution of Commercial Courts (Commercial Appellate Courts), Commercial Division and Commercial Appellate Division in the High Courts for adjudicating

⁴ 2019 SCC OnLine Del 10215.



commercial disputes of specified value and matters connected therewith or incidental thereto.

Driving home the contours of bonafide objective of Act of 2015

19. The purpose for enacting the Act of 2015 finds a place in the 188th Report of the Law Commission in 2003, wherein, the Law Commission recorded that:

"The purpose of the proposals in this report is to expedite commercial cases of high pecuniary value and create confidence in the commercial circles, within India and outside, that our Courts are quite fast, if not faster than Courts elsewhere.

The overall benefits that may accrue to the economy of the country as a whole by the establishment of the Commercial Division will, in our opinion, be in several hundreds of crores of Rupees. In view of the present era of globalisation and liberalization, investment in India, both domestic and foreign is bound to increase tremendously once the investors of the world know with certainty and assurance that the Commercial Division in the High Courts in India will dispose of the matters within a maximum period of two years which is comparable to the period of pendency in USA or UK. The expense involved in establishment of the Commercial Division will, in our view, be a small fraction of the overall benefits that will accrue to the economy of the country. Investors will make freely investment in business ventures without fear of blocking their substantial business capital in undue prolonged litigation in courts. The proposed changes are likely to render the overall market friendly change in investment in business scenario."

20. In the said report, it was acknowledged that, in order to foster confidence among both foreign and domestic investors, there was an urgent need for Parliament to establish a mechanism for the swift resolution of high-value commercial disputes. This was seen as essential to align India's judicial system with that of other developed economies, such as the United States, the United Kingdom and Singapore.

21. In its 253rd Report, the Law Commission of India noted that, as of



December 31, 2013, over 32,656 civil disputes were pending in the five High Courts with ordinary original jurisdiction—Bombay, Delhi, Madras, Calcutta, and Himachal Pradesh. Of these, more than half were commercial disputes. The Law Commission expressed concern that such a high volume of unresolved cases could discourage both domestic and foreign investments, and it recommended the following measures to address this issue:-

"4.2 The Commercial Courts, the Commercial Divisions and the Commercial Appellate Divisions of High Courts that have been recommended are intended to serve as a pilot project in the larger goal of reforming the civil justice system in India. The goal is to ensure that cases are disposed of expeditiously, fairly and at reasonable cost to the litigant. Not only does this benefit the litigant, other potential litigants (especially those engaged in trade and commerce) are also advantaged by the reduction in backlog caused by the quick resolution of commercial disputes. In turn, this will further economic growth, increase foreign investment, and make India an attractive place to do business. Further, it also benefits the economy as a whole given that a robust dispute resolution mechanism is a sine qua non for the all-round development of an economy."

22. Thus, the primary aim and object of the Act of 2015, as can be discerned from its Statement of Objects and Reasons, is to provide for speedy disposal of high value commercial disputes in order to reduce the pendency of cases as well as to induce greater confidence in the adjudicatory process. The relevant portion of the Statement of Objects and Reasons reads as under:-

"The proposal to provide for speedy disposal of high value commercial disputes has been under consideration of the Government for quite some time. The high value commercial disputes involve complex facts and questions of law. Therefore, there is a need to provide for an independent mechanism for their early resolution. Early resolution of commercial disputes shall create a positive image to the investor world about the independent and responsive Indian legal system."



23. A comprehensive reading of the Statement of Objects and Reasons, along with the insights from the Law Commission's 188th and 253rd Reports, provides significant clarity on the rationale behind the enactment of the Act. The Parliament's intention was to overhaul the commercial dispute resolution framework by distinguishing it from other civil disputes, thereby achieving its core goal i.e., the expeditious disposal of commercial disputes in India, keeping in view the larger picture of preserving and boosting the economy of the country. The aim and objective of the Act of 2015 clearly reflect the intent of the Parliament for speedy disposal of high value commercial disputes while setting up an independent mechanism for their early resolution.

24. After having the brief overview of the aim and objectives of the Act of 2015, it is essential to note that the instant civil suit admittedly is a commercial dispute as the claim amount exceeded the specified value contemplated within the scope of the Act of 2015 and, therefore, *vide* order dated 30.01.2018, the Joint Registrar had directed for the renumbering of the suit as Civil Suit (Commercial).

25. The order dated 30.01.2018 reads as under:

“The Registry is directed to re-number the present suit as CS (Commercial) and while allotting the new number, the Registry shall also indicate on the file, the old registration number of the case.”

Vide separate order pronounced in the open court, I.A No. 12696/2017 moved by the plaintiff is allowed.

*The defendants are directed to file their admission/denial affidavits in terms of **The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015** within two weeks from today with copy to the opposite side.*



Relist for admission/denial of documents on 20.03.2018.”

26. Section 15 of the Act of 2015 envisages the procedure *qua* transfer of pending cases, which *inter alia* provides for the applicability of the provisions of the Act of 2015 to all such procedures that were not complete at the time of transfer.

Effect of the provisions of CPC vis-a-vis the Act of 2015 on pending matters

27. At this juncture, it is pertinent to sail through various precedents on the transitional interplay of the provisions of CPC *vis-a-vis* the Act of 2015 in relation to the conversion of the suits in the interregnum. This Court in the case of *Dish TV India Ltd. v. Gulf DTH FZ LLC*⁵, after perusing the scheme of the Act of 2015 and CPC, held that after the conversion of the suit to a “commercial suit”, provisions of the Act of 2015 will apply. The relevant extracts of the said decision read as under:-

*“15. An analysis of the scheme of the Commercial Courts Act would demonstrate that in respect of all High Courts having ordinary original civil jurisdiction, the concerned Chief Justice would have to constitute Commercial Division in the High Court, which would be competent to hear suits relating to ‘commercial disputes’. Upon constitution of the Commercial Division, the suits relating to ‘commercial disputes’ would be transferred to the Commercial Division. Sub-section (4) of Section 15 provides that after the suit has been transferred to the Commercial Division of the High Court, the Commercial Division shall hold case management hearings in order to prescribe new timelines as per the provisions of the Commercial Courts Act. Proviso to Section 15(4) specifically provides that the time limit of 120 days for filing of written statement from the date of issuance of summons as prescribed under Order V Rule 1(1) of the CPC, shall not apply to such transferred suits and the transferee court shall have the discretion to prescribe new time limits for filing of the written statement. **In sum, the position that emerges is only when a pending suit relating to a ‘commercial***

⁵ 2024 SCC OnLine Del 4844



dispute' is transferred to the Commercial Division, the provisions of Commercial Courts Act will apply and till such time, the mandatory time period of 120 days for filing written statement would not apply.

16. Now, it may be relevant to refer to some of the undisputed facts obtaining in the present appeal. Admittedly, the suit pertains to a 'commercial dispute' in terms of Section 2(c) of the Commercial Courts Act. Even though the Commercial Courts Act came into force through an ordinance on 23rd October, 2015, the respondent no. 1/plaintiff filed the suit as an ordinary civil suit on 5th November, 2015. The Commercial Division of the High Court of Delhi was constituted vide notifications dated 6th November, 2015 and 17th November, 2015, with effect from 15th November, 2015.

18. In light of the aforesaid facts, the present suit would qualify as a pending suit and in terms of Section 15 of the Commercial Courts Act, was required to be transferred to the Commercial Division of this Court. In the High Court of Delhi, the Courts under Commercial Division are empowered to hear commercial suits as well as ordinary suits. Therefore, in the context of High Court of Delhi, the transfer of a suit as envisaged under Section 15 of the Commercial Courts Act, would in fact imply conversion of an ordinary suit to a commercial suit and renumbering of the same as a commercial suit. It was only after such conversion that the provisions of the Commercial Courts Act would apply."

28. In the case of *Nirman Consultants (P) Ltd. v. NNE Ltd.*⁶, this Court analysed the scheme of Section 15 of the Act of 2015 and held that the use of the word 'shall' leaves no room for any doubt that in such a case, the provisions of the Act of 2015 will apply to procedures that did not culminate at the time of transfer. Furthermore, it was held that in case the application in any suit is instituted or an order is passed prior to coming into force of the Act of 2015 and more specifically, prior to the suit being converted into a commercial suit, Section 13 of the Act of 2015 would not apply. However, when the suit has been converted into a commercial suit, any order passed or

⁶ 2019 SCC OnLine Del 11088.



any application filed subsequently, would be governed by the Act of 2015.

The relevant extracts of the said decision read as follows:-

“16. We have extracted Section 15 in foregoing paragraphs. In our view, Section 15 clearly and explicitly mandates that all pending suits and applications including the application under the Arbitration and Conciliation Act relating to a commercial dispute of a specified value shall be transferred to a Commercial Division. Use of the word ‘shall’ leaves no room for any doubt that in such a case the provisions of the Commercial Courts Act will apply to procedures that were not complete at the time of transfer. It is not as if the legislature was unmindful of the fact that there would be some implications on the existing matters before sub-section 3 of Section 15 was enacted. It was clarified that the provisions of the act in those matters shall apply to those procedure that were not complete at the time of transfer.

17. The question, which arises for our consideration is the effect of Section 15 to existing matters filed prior to coming into force of the Commercial Courts Act, 2015. In case the provisions of the Commercial Courts Act, 2015 is not to be applied to proceedings which stand transferred under Section 15, then in our view, it would only amount to a cosmetic change wherein only a different number will be provided to the commercial suit. In the case of Videocon (supra), the Apex Court was examining the effect of the amendment to Section 15(2) of the Securities and Exchange Board of India (Amendment) Act, 2012. The effect of this amendment was curtailing the right of the litigant in filing an appeal before the High Court. It was the stand of the SEBI that all pending appeals before the High Court were liable to be dismissed on account of an amendment as parties would be governed by the amendment. The court had concluded that when a lis commences, all rights and obligations of the parties get crystalized on that date. Reliance was also placed on Section 6 of the General Clauses Act. In fact, both the parties have relied on the observations in the case of Videocon (supra), paragraphs 39, 42 and 43 are being reproduced below:...

19. We thus hold that in case the application in any suit is instituted or an order is passed, prior to coming into force of the Commercial Courts Act and more specifically, prior to the suit being converted into a commercial suit, Section 13 of the Commercial Courts Act would not apply. However, when the suit has been converted into a commercial suit, any order passed or any application filed subsequently, would be governed by the Commercial Courts Act and it cannot be said that a substantial right stands vested cannot be taken away, more



particularly, in view of the provisions of Section 15 of the Commercial Courts Act, which clearly draws an exception only for those cases, where judgments are reserved.”

29. The Calcutta High Court as well in the case of ***Rashmi Metaliks Limited v. Soneko Marketing (P) Limited***⁷ has held that once the suit is converted to as a commercial suit, then the provisions of the commercial suit will apply. The relevant extract of the said case reads as under:-

*“The facts emerging from the pleadings and the record of the Court is that the Co-ordinate Bench presided over by one of us (Soumen Sen, J.) by an order dated 25th February, 2019 directed that suit to be re-numbered as a commercial suit and the appellant/defendant was directed to file written statement within three weeks from that date. On and from 25th February, 2019, the suit can only be heard by the learned Single Judge having the determination that is to say to try the suit as a commercial suit. A separate list of commercial suit is required to be published and the suit is required to be heard following the procedure under the Commercial Courts Act, 2015. **Once a suit is directed to be heard as a commercial suit, the procedure prescribed under the Commercial Courts Act, 2015 is required to be followed. It involves filing of a statement of truth, discovery and inspection within the stipulated time and in the manner as prescribed under the relevant rules.**”*

30. Furthermore, the Supreme Court in ***Smt. Dayawati v. Inderjit***⁸, observed that unlike substantive laws, procedural laws are always applied retrospectively. Emphasis was thus laid on the language of the new law. It was held that if the new law, through its language, displays an intention to be applied on even pending matters, then such a law shall be applicable for matters pending before the court of trial as well as the court of Appeal.

31. The Supreme Court in the case of ***Hitendra Vishnu Thakur v. State***

⁷ 2013 SCC OnLine Cal 1790.

⁸ AIR 1966 SC 1423.



*of Maharashtra*⁹, observed that a procedural statute, which is generally applicable in a retrospective manner, would be applied prospectively only when the result of its application creates new disabilities, obligations or imposes new duties in respect of transactions already accomplished. The law relating to forum and limitation was held to be procedural in nature.

32. Thus, it is palpably evident that after the advent of the Act of 2015, the steps, which had already culminated before the conversion of the suit into a commercial suit, were saved by the operation of law. However, subsequent to such conversion, all other proceedings of the commercial suit shall be governed by the provisions of the Act of 2015. Even otherwise, the timeline and other provisions of the Act of 2015 are procedural aspects and thus, they shall govern the pending causes. In view of the aforesaid, it leaves no room for doubt that the instant application will be governed by the rigours of the Act of 2015 as the same was commenced afresh after the operation of the Act of 2015. Nevertheless, it would be apposite to have a brief overview of the changes brought about by the Act of 2015 in the CPC, insofar as its provisions related to commercial disputes are concerned.

33. Chapter VI of the Act of 2015 seeks to amend the CPC, in so far as its application to commercial disputes is concerned, and in the manner as specified in the Schedule to the Act of 2015.

34. Clause 4 of the Schedule of the Act of 2015 amends the First Schedule to the CPC. Sub-clause E of Clause 4 of the Schedule to the Act of 2015 substitutes Order XI of the CPC. Substituted Order XI by way of the Act of 2015 provides *inter alia* for disclosure, discovery and inspection of the documents in suits before the Commercial Division of a High Court or a

⁹ (1994) 4 SCC 602.



Commercial Court.

35. Order XI Rule 1 of the Act of 2015 contemplates the filing of a list of all such documents pertaining to the suit and photocopies thereof by the plaintiff which are in its powers, possession, control or custody along with the plaint. The provision includes documents referred to and relied on by the plaintiff in the plaint and documents relating to any matter in the proceedings, which are in the power, possession, control or custody of the plaintiff, as on the date of filing of the plaint, irrespective of whether the same is in support of or adverse to the plaintiff's case. Furthermore, sub-rule 3 of Order XI Rule 1 states that the plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him, have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody.

36. Sub-rule 4 of Order XI Rule 1 of the Act of 2015, however, provides that in case of urgent filings, the plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath and subject to the grant of such leave by Court, the plaintiff shall file such additional documents in Court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the him and he does not have any other documents, in its power, possession, control or custody.

37. Sub-rule 5 of Order XI Rule 1 of the Act of 2015, which is of fundamental relevance to the present controversy, is a prohibitory provision



that prohibits relying upon documents that were in the plaintiff's power, possession, control or custody and not disclosed along with the plaint or within the extended period set out in the scheme of Order XI, save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint.

Delineating the ambit of Order XI Rule 1(5)

38. For the sake of convenience, Order XI of the CPC, as applicable to commercial disputes, reads as under:-

ORDER XI

*DISCLOSURE, DISCOVERY AND INSPECTION OF DOCUMENTS
IN SUITS BEFORE THE COMMERCIAL DIVISION OF A HIGH
COURT OR A COMMERCIAL COURT*

1. Disclosure and discovery of documents.—(1) Plaintiff shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint, including:—

(a) documents referred to and relied on by the plaintiff in the plaint;

(b) documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the plaint, irrespective of whether the same is in support of or adverse to the plaintiff's case;

(c) nothing in this Rule shall apply to documents produced by plaintiffs and relevant only—

(i) for the cross-examination of the defendant's witnesses, or

(ii) in answer to any case set up by the defendant subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.



(2) *The list of documents filed with the plaint shall specify whether the documents in the power, possession, control or custody of the plaintiff are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document, mode of execution, issuance or receipt and line of custody of each document.*

(3) *The plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody. Explanation.—A declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix.*

(4) *In case of urgent filings, the plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath and subject to grant of such leave by Court, the plaintiff shall file such additional documents in Court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession, control or custody.*

(5) *The plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint.*

(6) *The plaint shall set out details of documents, which the plaintiff believes to be in the power, possession, control or custody of the defendant and which the plaintiff wishes to rely upon and seek leave for production thereof by the said defendant.*

(7) *The defendant shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the written statement or with its counterclaim if any, including—*

(a) the documents referred to and relied on by the defendant in the written statement;



(b) the documents relating to any matter in question in the proceeding in the power, possession, control or custody of the defendant, irrespective of whether the same is in support of or adverse to the defendant's defence;

(c) nothing in this Rule shall apply to documents produced by the defendants and relevant only—

(i) for the cross-examination of the plaintiff's witnesses,

(ii) in answer to any case set up by the plaintiff subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.

(8) The list of documents filed with the written statement or counterclaim shall specify whether the documents, in the power, possession, control or custody of the defendant, are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document being produced by the defendant, mode of execution, issuance or receipt and line of custody of each document.

(9) The written statement or counterclaim 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 facts and circumstances of the proceedings initiated by the plaintiff or in the counterclaim, have been disclosed and copies thereof annexed with the written statement or counterclaim 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 counterclaim, 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 counterclaim.

(11) The written statement or counterclaim shall set out details of documents in the power, possession, control or custody of the plaintiff, which the defendant wishes to rely upon and which have not been disclosed with the plaint, and call upon the plaintiff to produce the same.



(12) Duty to disclose documents, which have come to the notice of a party, shall continue till disposal of the suit.”

39. A bare perusal of sub-rule 5 of Order XI Rule 1 of the Act of 2015 elucidates that additional documents, which were in the plaintiff’s power, possession, control or custody and not disclosed along with the plaint or within the extended period set out in the scheme of Order XI, can be taken into consideration only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint. Thus, the same is not a matter of right rather it is incumbent upon the conditional requirement of the standard culled out in the provision.

40. The Supreme Court in the case of *Sudhir Kumar v. Vinay Kumar G.B.*¹⁰, while analysing the provisions of Order XI CPC, held that for additional documents to be taken on record that was in the plaintiff’s power, possession, control or custody at the time when the plaint was filed, the plaintiff has to satisfy and establish a reasonable cause for non-disclosure along with plaint. However, at the same time, the requirement of establishing the reasonable cause for non-disclosure of the documents along with the plaint shall not be applicable if it is the case of the plaintiff that those documents have been found subsequently and in fact were not in the plaintiff’s power, possession, control or custody at the time when the plaint was filed. It was further held that at the stage of granting leave to place on record additional documents, the Court is not required to consider the genuineness of the documents/additional documents, as the concern of genuineness of the documents is to be considered during the trial and/or at the stage of deciding the application under Order XXXIX Rule 1 that too

¹⁰ (2021) 13 SCC 71.



while considering *prima facie* case. The relevant extracts of the said decision read as under:-

"9.4. However, the additional documents can be permitted to be bought on record with the leave of the court as provided in Order 11 Rule 1(4). Order 11 Rule 1(4) provides that in case of urgent filings, the plaintiff may seek leave to rely on additional documents as part of the above declaration on oath [as provided under Order 11 Rule 1(3)] and subject to grant of such leave by court, the plaintiff shall file such additional documents in court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession, control or custody.

9.5. Order 11 Rule 1(5) further provides that the plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint. Therefore on combined reading of Order 11 Rule 1(4) read with Order 11 Rule 1(5), it emerges that (i) in case of urgent filings the plaintiff may seek leave to rely on additional documents; (ii) within thirty days of filing of the suit; (iii) making out a reasonable cause for non-disclosure along with plaint.

9.6. Therefore a further thirty days' time is provided to the plaintiff to place on record or file such additional documents in court and a declaration on oath is required to be filed by the plaintiff as was required as per Order 11 Rule 1(3) if for any reasonable cause for non-disclosure along with the plaint, the documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint. Therefore the plaintiff has to satisfy and establish a reasonable cause for non-disclosure along with plaint. However, at the same time, the requirement of establishing the reasonable cause for non-disclosure of the documents along with the plaint shall not be applicable if it is averred and it is the case of the plaintiff that those documents have been found subsequently and in fact were not in the plaintiff's power, possession, control or custody at the time when the plaint was filed. Therefore Order 11 Rule 1(4) and Order 11 Rule 1(5) applicable to the commercial suit shall be applicable only with respect to the documents which were in plaintiff's power, possession, control or



*custody and not disclosed along with plaint. **Therefore, the rigour of establishing the reasonable cause in non-disclosure along with plaint may not arise in the case where the additional documents sought to be produced/relied upon are discovered subsequent to the filing of the plaint.***

10.3. Even the reason given by the learned Commercial Court that the invoices being suspicious and therefore not granting leave to produce the said invoices cannot be accepted. At the stage of granting leave to place on record additional documents the court is not required to consider the genuineness of the documents/additional documents, the stage at which genuineness of the documents to be considered during the trial and/or even at the stage of deciding the application under Order 39 Rule 1 that too while considering prima facie case. Therefore, the learned Commercial Court ought to have granted leave to the plaintiff to rely on/produce the invoices as mentioned in the application as additional documents."

41. In the case of *Nitin Gupta v. Texmaco Infrastructure & Holding Ltd.*¹¹, this Court held that unless the Commercial Divisions start enforcing the Rules legislated for commercial suits and refuse to entertain applications for late filing of documents, especially with respect to documents of suspicious character, and continue to show leniency in the name of “interest of justice” and “a litigant ought not to suffer for default of advocate”, the commercial suits would suffer from the same malady with which the ordinary suits have come to suffer and owing thereto, the need for the implementation of the Act of 2015 in its true letter and spirit was felt imminent. It was further held that for a plaintiff to be entitled to leave of the Court under Order XI Rule 1(5) of the CPC for belatedly filing a document, it is essential for the plaintiff to not only plead but “establish” “reasonable cause for non-disclosure along with the plaint. It is noteworthy that the

¹¹ 2019 SCC OnLine Del 8367.



provision not only puts a strict burden upon the plaintiff but also encircles the discretionary power of the Court and renders it subject to the fulfilment of certain conditions, that too on the basis of cogent material revealing sufficient cause.

42. In *Zee Entertainment Enterprises*, this Court noted the embargo imposed on the discretionary power of the Court under Order XI Rule 1(5) and held that the said embargo placed on the Court can be lifted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint. The use of the word “establishing” conveys that there should be something more than a mere explanation for non-production along with plaint, amounting to proof of the explanation. Furthermore, the Court also noted that the requirement of declaration on oath qua the documents in a commercial suit is not an empty formality. It requires detailed tabulation of a list of documents and thus, preparation of such a list leaves no room for any ‘inadvertent errors’. The relevant extracts of the said decision read as under:-

“16. A plaintiff in an ordinary suit, if desirous of producing a document required to be produced along with the plaint at a subsequent stage, is only required to obtain the leave of the Court. The Legislature has not laid down the grounds on which such leave is to be granted. I have however in Nitin Gupta supra held that grant of such leave by the Court is not a ministerial function and the Court has to be satisfied qua the reasons for non-production of the documents along with the plaint. The same however places no restriction on the power of the Court to grant such leave. As distinct therefrom, under Order XI Rule 1(5) as applicable to commercial suits, there is an embargo on the Court, not to allow the plaintiff to rely on any document which was in plaintiff's power, possession, control or custody and not disclosed along with the plaint. The disclosure under Rules 1(1) & (2) has to be accompanied with listing and filing of the documents. The said embargo placed on the Court can be lifted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint. The use of the word ‘establishing’ conveys that there should be something more than a mere



explanation for non-production along with plaint, amounting to proof of the explanation.”

43. In the case of *Hassad Food Company Q.S.C. v. Bank of India*¹² it was held that the language used in sub-rule (5) is that the plaintiff is required to show ‘a reasonable cause’ and not a ‘sufficient cause’ as is ordinarily provided in other provisions. It was further held that sub-rule (5) of Rule 1 of Order XI of the Act of 2015 uses the phrase “reasonable cause” which would require even a lower degree of proof as compared to “good cause”. The relevant extracts of the said case read as under:-

“13. Perusal of Order XI as noted above reveals that the plaintiff is bound to file all documents in its power, possession, control or custody with the plaint and in case of urgent filing of a suit if some additional documents are to be filed under sub-rule (1) of Rule 1 of Order XI, the plaintiff may seek leave of the Court to rely on additional documents which additional documents are required to be filed within 30 days of filing of the suit. Under sub-rule (5) of Rule 1 of Order XI, the plaintiff shall not be allowed to rely on documents which were in the plaintiff's power, possession, control or custody and not disclosed along with the plaint or within the extended period save and except by leave of the Court which leave can be granted only if the plaintiff establishes reasonable cause for non-disclosure along with the plaint. The language used in the sub-rule (5) is that the plaintiff is required to show “a reasonable cause” and not a “sufficient cause” as is ordinarily provided in other provisions.

14. While dealing with Order XIII Rule 2 CPC wherein the words used are: “unless good cause is shown”, the Supreme Court in the decision reported as (2002) 1 SCC 535 Madanlal v. Shyamlal, noted the distinction between “good cause” and “sufficient cause” and held that “good cause” requires a lower degree of proof as compared to “sufficient cause” and thus the power under Order XIII Rule 2 CPC should be exercised liberally. Sub-Rule (5) of Rule 1 of Order XI of the Commercial Courts Act, 2015 uses the phrase “reasonable cause” which would require even a lower degree of proof as compared to “good cause”.

¹² 2019 SCC OnLine Del 10647.



15. Thus it is to be seen in the present case whether the plaintiff who is required to file voluminous documents inadvertently misses out certain documents which are in line with the documents already filed and further the case of the plaintiffs and does not set up of a contrary case, would be a reasonable cause permitting the plaintiffs to file additional documents at this stage when pleadings are not complete as yet for the reason the replications of the plaintiffs have not been taken on record as yet. The plaintiffs along with suit has filed more than 2000 documents, the nature of the suit is commercial wherein the plaintiff No. 1 furnished corporate guarantee and plaintiff No. 2 invested money with Bush Foods pursuant to the representations of the BOI consortium who are the defendants. By these additional documents, the plaintiffs want to further demonstrate the conduct of the defendant banks which would show correspondence between Bush Foods and defendant Banks and that to the knowledge of the defendant banks the financial condition of Bush Foods was not healthy and the said facts were concealed from the plaintiffs rather representations were made that Bush Foods have assets justifying the investment inducing plaintiff No. 1 which was made to execute a corporate guarantee and plaintiff No. 2 to invest the money. The plaintiffs have thus made out a case of egregious fraud against the defendant banks”

44. In the case of **Rishi Raj v. Saregama India Ltd.**¹³, the mere inadvertence does not make up a reasonable cause as provided in Order XI Rule 1(5). This Court in the case of **Bela Creation Pvt. Ltd v. Anuj Textiles**¹⁴, dealt with the rigours of Order XI Rule 1(10), wherein, a similar embargo is placed upon the defendant, whereby, the defendant is allowed to rely on documents that were in his power, possession, control or custody and not disclosed along with the written statement or counterclaim, 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 counterclaim. The Court while dealing with the ambit of the “reasonable cause” held as under:-

¹³ 2021 SCC OnLine Del 4897.

¹⁴ 2022 SCC OnLine Del 1366.



*“In the absence of any averment to the effect that the aforesaid declaration, contained in the Statement of Truth accompanying the written statement and counter-plaint filed by the petitioner, was incorrect, the learned Commercial Court was justified in holding that additional documents, which were in the custody of the petitioner at the time of filing the written statement, could not be permitted to be introduced at a later stage. “Reasonable cause”, within the meaning of Order XI Rule 1(10) of the CPC, as amended by the Commercial Courts Act, cannot extend to negligence in filing of documents before the Court. **“Reasonable cause”, necessarily, must refer to a cause which was outside the control of the petitioner, and which prevented the petitioner from filing the concerned documents along with the written statement.**”*

45. This Court in the case of *TTK Prestige Limited vs. Baghla Sanitaryware Private Limited & Ors.* in CS(COMM) 281/2021 has extensively considered the scheme of the Act of 2015 and has thus held in paragraph no.17 thereof, as under:-

*“17. Order XI Rule 1(1) of CPC, as applicable to commercial suits, gives the first opportunity to a plaintiff to file documents on which they choose to rely upon at the time of filing of the suit. Such filing is done along with a declaration that all documents in the power, possession, control or custody of the plaintiff, pertaining to facts and circumstances of the proceedings initiated, have been disclosed and copies have been annexed with the plaint. Order XI Rule 1(3) CPC in fact furthers includes as part of the declaration that “the plaintiff does not have any other documents in its power, possession, control or custody”. Thereafter, Order XI Rule 1(5) CPC follows, which precludes the plaintiff from relying on documents which were in their power, possession, control or custody but not disclosed with the plaint, save and except with the leave of the Court. **What is underscored here is that the provision necessitates that such leave by the Court shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint. Thus, the plaintiff has the option of disclosing documents which they choose to rely upon and if not disclosed, the same cannot be allowed unless reasonable cause is established**”.*

46. Furthermore, this Court in the case of *Louis Dreyfus Company India Pvt. Ltd. v. Nutrilite Agro Products Pvt. Ltd.* in CS(COMM) 538/2020 vide



order dated 04.02.2025, while considering the similar application under Order XI Rule 1(5) CPC held that the purported reasons like ‘*change of counsels*’, ‘*advice of Registry*’ or ‘*bona fide belief*’ that those documents were in record of the Court, could not muster up the courage to cross the hurdle of ‘reasonable cause’ as envisaged under the provisions of Order XI Rule 1(5) CPC. The Court further observed that it is high time that commercial courts need to understand and realize the *bonafide* aim and true spirit of the legislature and instead of being mired in the web of frivolous applications supported by feeble grounds rather they should be a potent weapon for the speedy resolution of high-value commercial disputes as envisaged by the legislature.

47. Needless to state that the fundamental pre-requisite of establishing reasonable cause under Order XI would not be applicable to the documents which were not in possession of the plaintiff at the time of the presentation of the plaint. For the documents, which were discovered subsequently, the test is different and less stringent. The Supreme Court in the case of ***Sudhir Balyan*** clearly enunciated that the rigour of establishing the reasonable cause in non-disclosure of documents along with plaint may not arise in the case where the additional documents sought to be produced/relied upon are discovered subsequent to the filing of the plaint.

48. Thus, on the edifice of the judicial pronouncements as expounded above, the position of law revolving around Order XI as applicable to commercial disputes could be summarized as below postulates:

- i. While filing the “commercial suit”, the plaintiff ought to file a list of all documents pertaining to the suit along with the photocopies of all such documents in its power, possession, control or custody, along



with the plaint;

- ii. The provision covers documents which are referred to and relied upon by the plaintiff in the plaint as well as the documents in relation to any matter in question in the proceedings, irrespective of whether the same are in favour of or adverse to the case of the plaintiff;
- iii. In order to ensure true and full disclosure, the plaint shall also contain a declaration on oath of the plaintiff to the effect that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceeding initiated by him, have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have other documents in its power, possession, control or custody;
- iv. In order to cater to urgent filings, a provision has been carved out whereby the plaintiff can take leave to rely upon additional documents after filing, within a period of 30 days after filing;
- v. As a measure of last resort and to take care of unforeseen exigencies, Order XI Rule 1(5) permits the plaintiff to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint, save and except by leave of Court and such leave shall be granted only upon the plaintiff '*establishing*' reasonable cause for non-disclosure along with the plaint;
- vi. At this stage, the Court is not required to look into the genuineness of the documents as the same is to be considered appropriate to examine during the stage of trial and the only concern is whether the plaintiff has demonstrated that a reasonable cause had prevented it from producing the documents at the first instance;



- vii. The phrase ‘reasonable cause’, as used by the legislature in Order XI Rule 1(5), conveys a comparatively lower degree of proof as compared to the other phrases such as ‘sufficient cause’ or ‘good cause’;
- viii. However, at the same time, the ‘reasonable cause’ should be something which ought to be outside the control of the plaintiff and it must have prevented the plaintiff in the first instant from filing such documents at the time of presentation of the plaint;
- ix. Moreover, the purported reasons or bald assertions like ‘*change of counsels*’, ‘*advice of Registry*’, ‘*bona fide belief that those documents were already in the record of the Court*’, ‘*voluminous/bulky nature of documents*’ etc. under normal circumstances on its own, does not give the imprimatur that ‘*reasonable cause*’ has been established. The fundamental pre-requisite of ‘*reasonable cause*’ requires something more that would have prevented the plaintiff from placing those documents on record at the earliest opportunity.
- x. Having said so, the legislature has consciously used the word ‘*establishing*’ in Order XI Rule 1(5) so as to convey that the ‘*reasonable cause*’ must be established to the satisfaction of the Court, as opposed to merely showing or averring or pleading the bald assertion of reasonable cause.
49. Thus, on the anvil of the above postulates of law, this Court shall now examine the instant application.
50. No doubt, in the instant case, the suit was filed before coming into force of the provision of the Act of 2015, however, the suit stood converted as a commercial suit on 30.01.2018 and, thereafter, as already established



above, the plaintiff cannot escape from the rigours of the strict timeline envisaged under the Act of 2015. It is equally relevant to point out that this is not the first time that the plaintiff has moved such an application. On an earlier occasion as well, an application was filed by the plaintiff to introduce additional documents. On 30.01.2018, it was allowed by the Joint Registrar subject to payment of cost of ₹10,000/-. The order dated 30.01.2018 reads as under:-

“IA No. 12696/2017 (under Order 7 rule 14(3) CIPC filed by, plaintiff)

1. By way of this order, I shall dispose the present application filed by the plaintiff for taking the additional documents on record.

2. In this application, it is stated by the plaintiff that some the documents were left and were not filed along with the present suit as there are huge volume of record. It is further stated that now some documents/email have been found which were earlier left and are required to be filed. These are necessary for adjudication of the present matter.

3. In its reply it is stated by the defendant the plaintiff has admitted that the plaintiff was having those documents even at the time of filing of the present matter, but not chosen to file the same, and the plaintiff is shying away to appear in the witness box as the case of the plaintiff is false.

4. I have gone through the pleadings of this application, case and submissions forwarded by the respective parties. My opinion is as, follows;-

(i) As per the plaintiff, the plaintiff has filed the suit on the ground that the plaintiff has created software/application for the defendant but the plaintiff was not launched the same and deprived the plaintiff of rightful earnings which he had to get from defendant. On the other hand, it is stated by the defendant that it had already paid the due amount to plaintiff.

*(ii) The plaintiff has relied upon the judgments, tilted **Harnarayan Sharma v. Paras Vaid (2015) High Court Cases (Chh) 262 & Kapü Kumar Sharma v. Lalit Kumar Sharma & Anr. (2013) 14 SCC 612.***

*(iii) The defendant has relied upon the judgment titled **Asia Pacific Breweries v. Superior Industries, 2009 (109) DRJ 497.***



(iv) As far as the law laid down in these judgements are concerned, the superior courts have laid down that if the documents are essential for resolution of the disputes before the court, they can be taken on record and thus no prejudice is caused to the other party. Moreover, when the evidence is yet to commence, the documents can be taken on record.

5. From the perusal of the documents relied upon by the plaintiff in the present application, it appears that they will throw light to the controversy and aid in the proper decision of the matter. In these circumstances, these documents can be taken on record and the delay caused to the defendant can be compensated by way of cost. Accordingly, the application is allowed. The documents of the plaintiff are taken on record subject to cost of Rs. 10,000/- which shall be paid to the defendant through Counsel.”

51. This Court has perused the contents of the said application as well and if the earlier application is compared with the present one, it would manifest that both these applications are on a similar footing and reveal the same rationale for not placing on record the additional documents. For the sake of convenience, the grounds of delay as meticulously drafted in those applications are reproduced herein:-

<i>Cause of delay in both the applications</i>	
<i>I.A. No.12696/2017</i>	<i>I.A. 24359/2023</i>
<i>5. It is further submitted that the Plaintiff regrets any delay that is caused to the proceedings for seeking such leave of the Court, however, respectfully, the Plaintiff would not have urged for such discretion unless it was critically important for this Hon'ble Court to scrutinize the said additional documents in the interest of justice.</i>	<i>10. It is submitted that the said documents could not be placed on record earlier before this Hon'ble Court due to various reasons, which were mostly inadvertent and beyond the control of the Plaintiff It is submitted that the additional emails sought to be filed are trail mails, and attachments with the emails which have already been filed; inadvertently, the attachments/trail mails were not filed. <u>Additionally, the quantum of emails exchanged between the parties are voluminous and difficult to keep track of. During the filing of the</u></i>
<i>6. The Plaintiff further submits that every endeavour was made at the inception of the suit to place every relevant document before this Hon'ble Court, thus the</i>	



Plaintiff at that time had placed 27 documents running into 365 pages along with the Suit. However, owing to huge volume of records running into more than a thousand pages spanning from the year 2012 to 2015, these said additional documents were inadvertently left out.

7. It is humbly submitted that the present application does not prejudice the rights and/or opportunities of the Defendants in any manner, since the Plaintiff does not pray to change any submissions made by it in the past, but only intends to provide additional material for the proper adjudication the present suit.

previous records, Plaintiff had exercised due diligence, however, the said additional emails were inadvertently left out due to the large quantum of emails.

Furthermore, most of the emails sought to be filed by the Plaintiff are sent by Authorized Representatives of the Defendant Bank, which even the Defendant Bank was required to disclose along with the Written Statement. However, the Defendant did not assist this Hon'ble Court by providing any information or by placing any documents on record. The Written Statement filed, has no documents or annexures filed with it to provide any assistance to this Hon'ble Court in adjudicating this matter.

11. It is submitted that it is the case of the Plaintiff that the Defendant had asked the Plaintiff Company to develop an e-commerce platform/web-based marketplace for the Defendant company. The Plaintiff had set up the requisite infrastructure, entered into contracts with vendors and made the application 'live' on various online application stores with 'live data'. Plaintiff had a definite profit accruable in its favour through launch of said Application. However, the Defendant willingly breached the terms of the contract and did not commercially launch the Application as per the terms of the contract. The Plaintiff had placed on record various documents to prove its case. On the other hand, the Defendant, in its Written Statement has merely made ambiguous denials regarding the scope of work of the parties as per the agreement and interpretations of the terms of the contract.

14. Since the inception of the Suit, the Plaintiff had exercised due diligence and annexed the relevant documents to



substantiate the claim put forth by it. Subsequently, before the trial began, the Plaintiff realised that certain documents useful for the adjudication of the Suit had been inadvertently left out, and thus, the Plaintiff filed an Application under Order 7, Rule 14(3), CPC. The said Application was graciously allowed by this Hon'ble Court on 30.01.2018. Later, on 01.02.2018, the Suit was converted from CS(OS) No. 1705/2015 to CS(Comm.) No. 169/2018, i.e., into a commercial suit. It is humbly and respectfully submitted that the present Suit was filed before the advent of Commercial Courts Act, 2015 and has been later changed to Commercial Suit. The Plaintiff, therefore, humbly requests this Hon'ble Court to consider the present Application in the context of order 7, Rule 14(3), CPC read with Order XI as stipulated under Commercial Courts Act, 2015.

52. A bare perusal of both these applications would raise no clouds of any aspersions that the essential and fundamental rationale for not placing the additional documents on record, though meticulously couched in a different fashion, is one and the same in both the applications i.e., the voluminous nature of those documents.

53. Furthermore, it is also not the case that after the earlier application was allowed, immediately the present application came to be filed. In the present case, the plaintiff had examined PW1 and it is only on the completion of his evidence on 09.05.2023 that the present application came to be filed on 18.11.2023, which, if perused diligently, is essentially on the similar lines as I.A. No.12696/2017, which already stood disposed of on 30.01.2018.



54. Moreover, the reasons assigned in the instant application and the averments made therein would unequivocally establish that all the documents were very much in power, possession, control and custody of the plaintiff. According to the plaintiff's own showing, the purported e-mails and the agreements entered into between other entities are available on their servers.

55. The entire castle of reasonable cause is built brick by brick through averments made in the application, however, the foundational block of this castle rests solely on one factor i.e., due to the voluminous record of the data, these documents could not be brought before the Court while presenting the plaint.

56. The Supreme Court in *Sudhir Balyan* and this Court in *Hassad Food* as well, dealt with a similar reason and held that the "voluminous/bulky" character of the documents does not absolve the plaintiff from placing those documents at the earliest opportunity. The duty cast upon the plaintiff, as well as on the defendant, in this regard, is the result of a transformative legislative intent which is reflected in unequivocal terms in the Act of 2015.

57. In the instant case as well, if an application of this nature is allowed and accepted without establishing reasonable cause, then the same would completely render the provisions of the Act of 2015 as *otiose*. It is, thus, clearly a case of lack of due diligence rather than a case of reasonable cause.

58. It is equally relevant to bear in mind that the Act of 2015 was introduced so that an independent mechanism for the timely resolution of high value commercial disputes, that involve complex facts and questions of law, can be envisaged.

59. The instant is a suit that came to be filed in the year 2015 and is still



at the stage of the plaintiff's evidence. The plaintiff in all fairness ought to have produced all relevant documents which were necessary for a fair adjudication of the instant case initially at the time of filing of the plaint or at best, at the time of filing of the I.A. No.12696/2017 when similar documents were sought to be placed on record and the plaintiff was permitted to do so. In any case, these documents should have been placed before the deposition of the plaintiff was commenced. The ground of inadvertent mistake has been accepted once in I.A. No.12696/2017 and it could not be urged time and again to improve the case at every step of the journey. The aspect of establishing reasonable cause is not even relevant in the instant application as the element of disclosing reasonable cause has not been fulfilled. It is, thus, seen that not only the case of the petitioner falls outside the purview of sub-rule 5 of Order XI Rule 1 of the Act of 2015 but the same also does not fulfill the basic requirement of disclosing and establishing reasonable cause.

60. The Court is conscious of the fact that reasonable cause requires a lesser degree of proof, whereas, sufficient cause or good cause, as the case may be, requires a higher degree of proof as has been held in the case of *Hassad Foods*. However, in the instant case, there is not even a reasonable cause shown by the plaintiff in not producing the documents in question on an earlier occasion. Moreover, the purported reason of the record being bulky is not outside the control of the plaintiff and the plaintiff was very well aware about the voluminous character of those documents at the time of filing of the suit as those documents were in power and possession of the plaintiff. In view of the aforesaid, the rigours of Order XI Rule 1(5) would be applicable in the present case in full force and the plaintiff cannot be



absolved from the responsibility of filing of all the documents relating to the proceedings at the time of presentation of the plaint. The amended legal position places a heavier burden upon the party seeking to place on record additional documents and grounds such as the voluminous or bulky nature of documents would not suffice.

61. The decisions relied upon by the plaintiff in the case of *Iffco Tokio General Insurance* and *Roots Cooling System (P) Ltd.* also do not come to its rescue as the said decisions are clearly distinguishable.

62. In the case of *Iffco Tokio General Insurance*, the plaintiff was merely seeking to refer to certain clauses of the alleged Travel Agent's Handbook, which could even have been referred by the witness without filing of a copy of the documents and thus, the Court had allowed for the placing of additional documents. Furthermore, in the said case, there was another set of documents that were not in the possession of the plaintiff and thus, the rigours of Order XI Rule 1 were held to be not applicable therein.

63. The case of *Roots Cooling System (P) Ltd.* is also clearly distinguishable both on facts and law. *Firstly*, it was a petition under Article 227 of the Constitution of India, 1950 against an order allowing the documents to be taken on record. *Secondly*, in that case, the Court noted that documents therein were already filed by the plaintiff at the time of replication and it was only at the stage of the exhibition of those documents that the defendants therein raised the objection. Thus, in that peculiar factual scenario, the Court upheld the decision of the Trial Court to allow the application to place on record the additional documents.

64. The instant is not the case wherein the documents were earlier filed by the plaintiff and it was thereafter the plaintiff is seeking the leave of the



Court as mandated under Order XI Rule 1 of the Act of 2015. Thus, the case of *Iffco Tokio General Insurance*, which learned counsel appearing for the plaintiff heavily relied upon also did not come to his rescue.

65. The decision of the Andhra Pradesh High Court in the case of *Penumatsa Anil Kumar* is further distinguishable on facts and even otherwise, has only persuasive value not binding on this Court.

66. Needless to state, this Court in the case of *Zee Entertainment Enterprises Ltd.* has rightly observed that if leave is granted in a liberal manner in the name of interest of justice, the litigants and practitioners of commercial suits would never wake up to the changed circumstances in which a commercial suit is to be conducted. It is, thus, necessary for the Courts to enforce such change and discipline, by ceasing to exercise the discretion in this respect. The discretion of the Court must be exercised in harmony with the legislative intent behind a provision, especially when the legislative intent is expressed in unequivocal and unambiguous terms.

67. Even otherwise, the present case does not provide sufficient cause for the exercise of discretionary power, as the facts clearly depict that the documents were very much in possession of the plaintiff and were not brought on record for reasons best known to the plaintiff.

68. To ascertain the fundamental reasons for the delay in filing the documents, the Court fails to understand as to on what basis the delay is being explained. There is no reason at all, let aside any cogent reason, for filing of the documents at this belated stage and for non-filing at the appropriate stage.

69. The plaintiff appears to have slept over the documents for a considerable period of time and it is only after the evidence of PW1 was



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over, it has woken up from its deep slumber. It appears that the primary consideration for filing these documents at this belated stage is to fill-up the lacuna in evidence of PW1. This application is yet another example of dilatory tactics being resorted to, which ultimately hinders the progression of the commercial suit and inhibits taking the civil dispute to its logical end with due expedition. It is apposite to note that procedural law cannot be applied to permit the parties to twist and turn the case as per changing scenarios, by resetting and revisiting the procedural stages in a light-hearted manner.

70. Allowing such an application at this belated stage, especially in the absence of a reasonable justification, would fundamentally undermine the core objectives of the Act of 2015. The purpose of the legislation was to establish a clear and structured framework for the speedy resolution of commercial matters, and permitting such a recourse now, without a justifiable reason, would effectively defeat the legislative intent. Such recourse perhaps cannot be countenanced by this Court and stares right in the face of the bonafide intention of the legislature behind the Act of 2015.

71. In view of the aforesaid, the instant application stands dismissed.

72. No Costs.

CS (COMM)169/2018 & I.A. 24360/2023

73. List this matter before the Joint Registrar on 17.03.2025 to take necessary steps in accordance with extant rules and regulations.

**(PURUSHAINDRA KUMAR KAURAV)
JUDGE**

FEBRUARY 12, 2025/p/@m