



2025:DHC:4910



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

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Reserved on: 10.03.2025
Pronounced on: 06.06.2025

+ **CM(M) 1870/2024 & CM APPL. 8896/2024 STAY, CM APPL. 17549/2024 STAY**

M/S UNILEC ENGINEERS LTDPetitioner
Through: Mr. Puneet Jaiswal, Advocate.

versus

HPL ELECTRIC POWER LTDRespondent
Through: Mr. J.K. Srivastava, Advocate.

CORAM:
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

RAVINDER DUDEJA, J.

1. The present petition under Article 227 of the Constitution of India is filed impugning the order dated 31.01.2024 passed by Learned District Judge (Commercial)-08 (Central), Tis Hazari Court, Delhi, in Civil Suit No. 3014 of 2019 titled *HPL Electric & Power Ltd. vs M/s. Unilec Engineers Ltd.*
2. Briefly stated, the facts which led to the filing of the present petition are that the Respondent, as Plaintiff, instituted Civil Suit No. 3014/2019 titled *M/s HPL Electric & Power Ltd. vs. M/s Unilec*



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Engineering Ltd. & Ors., seeking recovery of ₹28,18,062/-. The Petitioner, as Defendant, filed a written statement accompanied by an affidavit. However, it was not accompanied by the mandatory statement of truth and affidavit of admission/denial of documents and was also not signed on each page. Although no objection was initially raised by the Plaintiff in the replication, the Trial Court, vide order dated 04.07.2022, took note of these defects. Thereafter, the Plaintiff filed an application under Order VI Rule 15A CPC for striking off the written statement, which was allowed by the Trial Court on 19.04.2023. The said order was challenged by the Petitioner before this Court by way of CM(M) No. 990/2023, which was allowed on 17.08.2023, permitting the Petitioner to cure the defects and refile the written statement in compliance with procedural requirements.

3. Pursuant to the order of this Court, the Petitioner filed the duly signed written statement along with the statement of truth and affidavit of admission/denial on 17.10.2023. Issues in the matter were thereafter framed by the Trial Court on 17.10.2023 and 11.12.2023. Subsequently, on 19.12.2023, the Petitioner filed an application under Order XI Rule 1 CPC seeking permission to place additional documents on record. The Respondent filed reply to the said application on 15.01.2024. The Trial Court dismissed the application vide the impugned order dated 31.01.2024, giving rise to the present petition.



4. Learned counsel for the petitioner submitted that the trial court committed an error in dismissing the petitioner's application under Order XI Rule 1 CPC, which was filed to bring on record certain documents essential for confronting the plaintiff's witness (PW1) during cross-examination. It was contended that the suit was one for recovery of money, and the documents sought to be placed on record comprised email correspondences and letters exchanged between the parties during the course of their commercial dealings. The petitioner pointed out that PW1 had failed to file complete documentation relating to the transactions and had, in fact, admitted during cross-examination that he was unaware of relevant correspondence. The petitioner, therefore, sought to file documents evidencing that he had, inter alia, communicated to the plaintiff/respondent to take back the rejected goods but such a request was declined and petitioner was not granted opportunity for further cross-examination. These documents, according to the petitioner, are crucial for testing the credibility of the plaintiff's claims.

5. It was further submitted that the written statement had been filed during the COVID-19 lockdown period in October 2021, and the petitioner could not access his office or retrieve the relevant physical and electronic documents due to the prevailing restrictions. The documents were only accessed later and the application under Order XI was filed during the cross-examination stage. It was argued that Order XI Rule 7(c)(1) CPC specifically permits confronting a witness



with documents during cross-examination, and the documents sought to be introduced fall squarely within that framework. The documents include a letter dated 08.07.2016 issued by Power Grid Corporation of India Ltd. (**Document-A**), various emails exchanged from July 2016 to October 2016 (**Documents B to F**), and an email dated 27.07.2018 from Power Grid to Unilec Engineering (**Document-E**), which collectively reflect the transactional history and disputes between the parties. Reliance has been placed on *Hassad Food Company Q.S.C. & Anr. v. Bank of India & Ors.*, judgment dated 15.10.2019 in CS (Comm) No. 9/2018, wherein this Court held that Sub-rule (5) of Rule 1 of Order XI of the Commercial Courts Act, 2015 employs the phrase “reasonable cause,” which requires a lower degree of proof than “good cause.”

6. *Per contra*, learned counsel for the Respondent/Plaintiff submitted by the that the present suit was instituted in the year 2019 and the Petitioner/Defendant filed the written statement belatedly on 17.08.2023, only after directions were issued by the coordinate bench of this Court. The Respondent contends that despite being granted a clear opportunity in 2023 to place all relevant pleadings and documents on record, the Petitioner failed to annex the present documents at that stage. The Petitioner’s explanation that the documents could not be filed earlier due to the COVID-19 pandemic is unconvincing, as no such restrictions were in place in 2023 when the written statement was actually filed. The order dated 17.08.2023



had permitted the Petitioner to file the written statement in a complete and defect-free manner, including the statement of truth and affidavit of admission/denial of documents. Therefore, the Petitioner had ample opportunity to file all documents but chose not to do so.

7. The learned counsel for respondent further submits that the application under Order XI Rule 1 CPC was filed only on 19.12.2023, at a stage when the matter had already progressed to the stage of Defendant's evidence, and the Plaintiff's examination had concluded. It is submitted that the Petitioner not only failed to file the relevant documents earlier, but also did not confront or contradict the Plaintiff's witness with the said documents during cross-examination. This failure, the Respondent argues, is a deliberate omission and an afterthought, intended to reopen settled stages of trial and cause unwarranted delay. Accordingly, the Respondent vehemently opposes the application on grounds of delay, procedural impropriety, and lack of due diligence on the part of the Petitioner.

8. Before dealing with the rival submissions, a reference may be made to the provisions of Order 11 Rule 1 CPC as applicable to the Commercial Courts.

***“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.”

9. A perusal of the aforesaid provision would show that in all commercial suits, defendant is obliged to file a list of documents in its power, possession, control or custody pertaining to the suit along the written statement or with its counter claim, if any,. These documents would include the documents referred to and relied upon by the defendant in the written statement as well as the documents relating to any matter in question in the proceedings even if the same is adverse to the defendant’s defence.

10. Sub Rule 7(c) provides certain exceptions to the aforesaid rule. In terms of Sub Rule 1 (c) (ii) of Order 11 Rule 1, an exception is provided in respect of documents which are produced for the cross examination of the plaintiff’s witnesses.

11. Sub Rule 10 mandates that defendant shall not be allowed to rely on the documents which were in defendant’s power, possession, control or custody and not disclosed along with written statement or



counter claim except with the leave of the court and upon showing reasonable cause for the same.

12. In commercial suits, the time periods and other formalities stipulated in the Commercial Courts Act are binding and are required to be strictly followed. The primary ground urged by the Petitioner is that the documents sought to be placed on record were essential for confronting the Plaintiff's witness during cross-examination and that their non-filing was due to the COVID-19 lockdowns. However, this explanation is wholly unconvincing in the facts of the present case. The written statement was re-filed in October 2023, well after the COVID pandemic was over and all restrictions had been lifted.

13. In *Sudhir Kumar @ Baliyanv. Vinay Kumar G.B.*, Civil Appeal No. 5620/2021, the Supreme Court held that the requirement to show reasonable cause for non-disclosure of documents under Order XI Rule 1(4) CPC applies only to those documents that were in the plaintiff's power, possession, control, or custody at the time of filing the plaint. However, this requirement does not apply where the plaintiff avers that the documents were discovered later and were not earlier within their possession or control, *inter alia* it has been held as under;

"7.6. ... Therefore 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 XI Rule 1 (4) and Order XI 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."

14. Admittedly, petitioner was in power and possession of additional documents even when the written statement was filed. The Petitioner had full opportunity to file such documents while filing the written statement in 2023 in compliance with this Court's directions in CM(M) No. 990/2023. The mandatory requirements under the Commercial Courts Act, 2015, as well as the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018, and the amended CPC as applicable to commercial disputes, underscore the importance of procedural discipline and adherence to filing timelines.

15. Furthermore, this Court in ***Hassad Food Co. Q.S.C. v. Bank of India*** (supra), although interpreting the phrase "reasonable cause" under Order XI Rule 1(5), emphasized that even a lower threshold than "good cause" still requires the party to act with due diligence and not as an afterthought. In the present case, the Petitioner was not only aware of the existence of the documents but failed to use them when the Plaintiff's witness was available for cross-examination. The record



shows that PW-1 was cross-examined on 18.12.2023. The submission of the petitioner that his request for grant of time to present a laptop for confronting the witness with the e-mail correspondence was turned down by the trial court is not borne out from the record. The application to place these documents on record was in fact filed on the next day on 19.12.2023, by when, the case had reached the stage of defendant's evidence, thus reinforcing the impression that the application was reactive and lacking in bona fides. The learned Commercial Court had rightly placed reliance on the judgments of this Court in *Anita Chhabra & Ors. Vs. Surender Kumar*, 2022 SCC Online Delhi 3089 and *Saregama India Ltd. vs. Zee Entertainment Enterprises Ltd.* 2023 SCC Online Delhi 2437, and is therefore perfectly justified in holding that the documents at this stage cannot be taken on record.

16. Given the facts and legal position, no procedural or jurisdictional infirmity is found in the impugned order. The Trial Court has exercised its discretion judiciously and in accordance with law, and there is no perversity or manifest error that warrants interference under Article 227 of the Constitution. The supervisory jurisdiction of this Court is limited and cannot be invoked merely to substitute a different view or revisit the merits of the decision unless the decision is shown to be patently illegal, arbitrary, or contrary to



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settled law, as held by the Supreme Court in *Estralla Rubber v. Dass Estate (P) Ltd.*, (2001) 8 SCC 97.

17. Having considered the rival submissions of learned counsel for both parties and upon perusal of the record as well as the impugned order, this Court is of the view that no interference is warranted with the impugned order dated 31.01.2024 passed by the Id. District Judge (Commercial)-08 (Central), Tis Hazari Courts, Delhi. The Trial Court, after considering the procedural history and conduct of the parties, rightly rejected the Petitioner's application under Order XI Rule 1 CPC.

18. **Accordingly, the petition and all pending applications, if any, stand disposed of.** The Trial Court is directed to proceed with the matter expeditiously and in accordance with law.

RAVINDER DUDEJA, J.

JUNE 06, 2025/NA