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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% Judgment delivered on: 24/11/2025

+ **CS(COMM) 439/2018 & CC 970/2007**

THE COCA - COLA COMPANY & ANR.Plaintiffs

versus

M/S RAJ TRADE LINKS & ANR.Defendants

Advocates who appeared in this case

For the Plaintiffs : Ms. Nancy Roy & Ms. Aastha
Kakkar, Advocates.
For the Defendants : Mr. Manoj Mittal & Mr. Ishan
Mittal, Advocates for Defendant
No.2.

CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

I.A. 34207/2024

1. The present Application is filed by Defendant No. 2 under Order XI Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 (“CPC”) as amended by the Commercial Courts Act, 2015 (“CC Act”) for taking on record the Income Tax Returns of Defendant No. 2 for the year 2007-2008 to 2011-2012 (“Additional Documents”).

FACTUAL BACKGROUND:

2. Plaintiff No. 1 is engaged in the manufacture and sale of concentrates and beverage bases offered for sale in bottles and other containers. Plaintiff



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No. 1 appoints the bottlers and grants a license to the bottlers to use Plaintiff No. 1's specified trade marks in connection with the manufacture, packaging, distribution and sale of the concentrates and beverage bases in and throughout a territory as defined and described in the respective bottler's agreements.

3. Plaintiff No. 2 is an authorized bottler of Plaintiff No. 1 authorized to manufacture, package, distribute and sale specified beverage bases under Plaintiff No. 1's specified trade marks in authorized containers under terms and conditions stipulated in the bottler's agreement. The authorized containers are required to be purchased by authorized bottlers from manufacturers approved by Plaintiff No. 1. The beverage bases bearing Plaintiff No. 1's specified trade marks are packed, distributed and sold in bottles, aluminium cans, cartons and other containers in various sizes and forms by Plaintiff No. 2 under authorization and license of Plaintiff No. 1 within the territory of India.

4. Defendant No. 2 is a sole proprietorship firm engaged in the business under the exchange-collection of empty bottles of beverage bases named 'Coca Cola' and 'Pepsi' drinks manufactured by the Plaintiffs.

5. The Plaintiffs have filed the present Suit for injunction, damages and delivery up for infringement of trade mark and unfair competition alleging that the Plaintiffs upon being faced with situation wherein the stocks of used bottles of Plaintiff No. 2 meant to be recycled to Plaintiff No. 2 and other bottlers of Plaintiff No. 1 dwindled creating a shortage of the Plaintiffs' products in the market. Since the number of bottles that can be circulated is finite, the Plaintiffs became incapable of distributing fresh



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stocks till an equivalent number of used bottles and cases reached the Plaintiffs' authorized bottling plants for refilling and recycling.

6. The Plaintiffs have stated in their Complaint that the Plaintiffs also directed investigations to ascertain as to where the used bottles and cases started to disappear and the preliminary investigations disclosed that large stocks of the used bottles and cases, were allegedly being hoarded at the premises of the Defendants. The Plaintiffs have stated in their Complaint that the Plaintiffs suspect that the Defendants are lifting used bottles and cases belonging to Plaintiff No. 2 from the market and are hoarding the used bottles and cases belonging to Plaintiff No. 2 with an intention to hamper the business of the Plaintiffs and that the Defendants might be supplying the used bottles and cases belonging to Plaintiff No. 2 to unscrupulous parties for filling and distribution of spurious beverages in the market.

SUBMISSIONS ON BEHALF OF DEFENDANT NO. 2:

7. The learned Counsel for Defendant No. 2 made the following submissions:

7.1 On 22.08.2007, at the time of filing of the Counter Claim and at the time of filing of the Written Statement, the Additional Documents were not in the possession of Defendant No. 2. The Additional Documents are necessary to prove damages claimed through the Counter Claim and the Written Statement against the Plaintiffs.

7.2 The Affidavit of Evidence of CCW-I along with the Additional Documents was filed by Defendant No. 2 on 08.07.2022. The evidence in the Suit was at the initial stage at that time as the



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cross examination of the said witness was pending for a long time.

- 7.3 Defendant No. 2 had to collect Additional Documents from the office of Defendant No. 2's Chartered Accountant and as the office of Defendant No. 2's Chartered Accountant was not operative during the period of corona pandemic, Defendant No. 2 could not file the Affidavit of Evidence in the Counter Claim earlier.
- 7.4 On 09.02.2024, the Plaintiffs for the first time objected to the filing of the Additional Documents whereas the Plaintiffs could have taken the same objection on 05.09.2022, when the Plaintiffs objected to filing of the Affidavit of Evidence by Defendant No. 2.
- 7.5 As the Additional Documents are necessary to prove damages claimed against the Plaintiffs, it is in the interest of justice that the Additional Documents be taken on record.

SUBMISSIONS ON BEHALF OF THE PLAINTIFFS:

8. The learned Counsel for the Plaintiffs made the following submissions:
- 8.1 The present Suit was re-numbered as a Commercial Suit *vide* order dated 05.02.2018 and the CC Act does not permit belated filing of fresh documents owing to specific prohibition under Order VIII Rule 1A of CPC and Order XVIII Rule 4 (1B) of CPC as amended by the CC Act.
- 8.2 The opportunity to object to the filing of the Additional Documents arose to the Plaintiffs only when the Affidavit of



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Evidence of CCW-1 was allowed to be taken on record on 08.12.2023.

- 8.3 The Additional Documents being sought to be placed on record ought to have been in the power and possession of Defendant No. 2 at the time of filing of the Counter Claim and the Additional Documents, which are subsequent to the filing of Counter Claim also ought to have been in power and possession of Defendant No. 2 for more than 12 years. However, the same are being sought to be placed on record after more than 15 years of occurring such events. Hence, the Additional Documents cannot be permitted to be placed on record by Defendant No. 2.
- 8.4 Defendant No. 2 cannot be permitted to produce new documents at this stage when the Plaintiffs' evidence has already been closed in the Suit. The Additional Documents sought to be placed on record have not been disclosed in the Counter Claim or alluded to. The pleadings in the Counter Claim have no reference to the Additional Documents or the contents of the Additional Documents. Therefore, the Additional Documents are beyond the scope of the pleadings in the Counter Claim. By seeking to bring the Additional Documents on record, Defendant No. 2 is merely trying to fill the lacunae in its pleadings and to prove the alleged damages even for the years prior to 2007-2008.
- 8.5 Defendant No. 2 has only stated in the Application that during corona pandemic the office of Defendant No. 2's Chartered



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Accountant was closed and Defendant No. 2 could not obtain the Additional Documents during the period of corona pandemic. The reason of corona pandemic to not obtain the Additional Documents is baseless as the nationwide lockdown due to corona pandemic was declared for the first time on 24.03.2020, whereas the Additional Documents pertain to a period nearly 12 years prior thereto and 2 years after the Plaintiffs closed their evidence in affirmative. Hence, the sole justification provided by Defendant No. 2 of corona pandemic is *mala fide* and liable to be rejected outrightly.

- 8.6 Defendant No. 2 has made no statement as to whether Additional Documents were ever in the power and possession of Defendant No. 2. Defendant No. 2 also had ample opportunity to file the Additional Documents during the pendency of the Suit. Permitting the Additional Documents to be brought on record would cause irreparable prejudice to the Plaintiffs in as much as the Plaintiffs never had the occasion to deal with the Additional Documents in its evidence and now the Plaintiffs' evidence also stands concluded. Therefore, Defendant No. 2 cannot be permitted to improve his case after the Plaintiffs have closed their evidence in affirmative.
- 8.7 The Additional Documents cannot be permitted to be brought on record as Ex. CCW-I/B (colly) as Defendant No. 2 is not permitted to lead additional evidence by introducing new facts / pleadings and documents unless sufficient cause is made out in the Application for that purpose and an order, giving reasons,



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permitting such Additional Documents is passed by the Court in terms of Order XVIII Rule 4(1B) of CPC as amended by the CC Act.

8.8 The present Application filed by Defendant No. 2 is a gross abuse of process of law. Defendant No. 2 has time and again been negligent and has intentionally indulged in a lackadaisical conduct in adhering to the timelines prescribed by this Court and is clearly not serious in defending the present Suit instituted by the Plaintiffs. If the present Application is allowed and the Additional Documents filed by Defendant No. 2 are taken on record, the same would cause severe prejudice to the rights of the Plaintiffs.

ANALYSIS AND FINDINGS:

9. This Application requires consideration of whether the Additional Documents filed by Defendant No. 2 can be taken on record. For the same, the relevant provisions of Order XI of the CPC as amended by the CC Act are as under:

“(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 counter-claim 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,*



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- 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.”

10. At the outset, the relevant dates in the Suit and the Counter Claim are as under:



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Date	Event
24.04.2007	Suit instituted and listed before the Court.
22.08.2007	Defendant No. 2 filed the Counter Claim.
07.09.2007	Written Statement of Defendant No. 2 taken on record.
23.09.2008	Issues framed in the Suit and the Counter Claim.
28.08.2009	Recording of the Plaintiffs' evidence commenced.
19.12.2017	Defendant No. 2 directed to file Affidavit of Evidence within four weeks.
14.03.2018	Plaintiffs' evidence closed.
03.04.2018	Defendant No. 2 again directed to file Affidavit of Evidence within four weeks, failing which cost of ₹7,500/- was to be imposed.
05.09.2019	Court granted Defendant No. 2 the last opportunity to lead evidence on 13-15.11.2019.
13.11.2019	DW absent; adjournment granted subject to cost of ₹25,000/- to be paid to the Plaintiffs.
24.01.2020	Defendant No. 2 granted one more opportunity to pay the cost imposed <i>vide</i> order dated 13.11.2019 which was further reduced to ₹15,000/-.
13.08.2020	Defendant No. 2 did not appear and the matter was adjourned.
07.10.2020	Defendant No. 2 granted 8 weeks to file if there was anything fresh to be filed.
08.07.2022	Defendant No. 2 filed Affidavit of Evidence of CCW-1.



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01.11.2022	Defendant No. 2 filed application for condonation of delay in filing Affidavit of Evidence of CCW-1.
08.12.2023	Court condoned delay and took Affidavit of Evidence of CCW-1 on record subject to cost of ₹10,000/-.
27.05.2024	Defendant No. 2 filed present Application seeking to place Additional Documents on record.

11. In **Scindia Potteries & Services P. Ltd. v. J.K. Jain**, 2012 SCC OnLine Del 5296, this Court while dealing with a situation wherein an application was filed by defendant no. 1 therein, under Order VIII Rule 1A(3) of CPC for permission to produce additional documents at the stage when evidence was being led by the defendants observed that:

“.... there were ample opportunities available to the defendant No. 1 to have filed the relevant documents either prior to conclusion of admission/denial of documents or after framing of issues on 16.05.2005 or 07.09.2005. Neither of the aforesaid opportunities were availed of by the defendant No. 1 for reasons best known to him.

13. Instead, defendant No. 1 has waited for the plaintiff to conclude its evidence which stood concluded three years ago, in the year 2009 and thereafter, the defendants have proceeded to lead their own evidence by producing fourteen witnesses till now. Defendant no. 1 filed his own affidavit by way of evidence as DW-9, on 13.6.2010 and he has enclosed the documents in question therewith knowing very well that no such prior permission had been taken/granted by the court for the said purpose. It was only after about three months from the date of filing of the said affidavit, did it dawn on the defendant No. 1 that he was required to approach the Court for taking permission to file the said documents and thus, I.A. No. 3213/2011 came to be filed on 14.2.2011.”

In view of such facts and circumstances, this Court had observed that it was not the case of defendant No. 1 therein that he was earlier unaware of the



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existence of the said documents or that he could not produce the said documents despite due diligence demonstrated by him. This Court further acknowledged that the plaintiff therein would be adversely affected if the said documents were permitted to be taken on record after such an inordinate delay and that the same would undoubtedly retard the progress of the case entirely to the detriment of the plaintiff, declined to take the additional documents on record.

12. This Court in ***Societe DES Produits Nestle S.A. v. Essar Industries***, 2016 SCC OnLine Del 4279 analysed the conduct of the defendant in seeking to file a large number of additional documents in 2016 in a suit filed in 1993 where the issues were framed in 2000 and 2005, the plaintiff's evidence concluded in 2015. Considering the conduct of the defendants, this Court disallowed the additional documents on the ground that there was no justification for the defendants to file documents at such a later stage in a suit of 1993 vintage and would result in delaying the trial. This Court observed that:

“10. Though Courts have undoubtedly been liberal in past in allowing documents to be filed, even at a late stage, beyond the stage prescribed in law for filing thereof, but I am of the view that the said view needs to be changed specially in the light of the coming into force of the Commercial Courts Act, the whole purport whereof is to expedite the disposal of such suits and when certain edge has been given to the said suits in the manner of disposal thereof and which differentiation and advantage, if the said suits were not to be treated differently or did not form a distinct class, would be held to be arbitrary and discriminatory. A litigant with a claim which would not classify as a commercial dispute would certainly then be entitled to contend that no priority should be given to commercial suits as is purported to be done under the Commercial Courts Act.”



11. The principle which prevailed with the Courts earlier, for allowing documents even at the late stage viz. of the litigant should not suffer for the fault of his advocate or for being not advised to file documents at the correct stage and which principle had evolved in the context of mofussil jurisdiction, where the litigants were uneducated and not aware of their rights, cannot certainly be applied to suits of commercial men and commercial concerns who do not suffer from any such handicap.

12. Applying the said reasoning and finding the suit to be of 1993 vintage and not finding any justification for the defendants No. 4&5 to file documents at this stage and yet further finding that allowing such additional documents to be taken on record would endlessly delay the trial, inasmuch as an opportunity will then also have to be given for proof of the said documents and which proof would entail examination of a number of witnesses, I am not inclined to allow the additional documents to be taken on record.”

(Emphasis Supplied)

13. This Court in **Ramanand v. Delhi Development Authority**, 2016 SCC OnLine Del 4925 further observed that:

“11. Admittedly, the issues were framed way back on 28.11.2007. An additional legal issue has been framed on 7.11.2012. The evidence of the petitioner has already commenced. Now at this belated stage the petitioner has chosen to move the present applications in 2012. The only explanation given is that the documents intended to be filed are a result of “subsequent events and supply of relevant information by the concerned authorities”. Under the guise of this general excuse 88 additional documents are sought to be placed on record. The manner in which the documents are sought to be filed clearly show that the plea of the petitioner lacks merits. The belated filing of the documents would prejudice the respondent at this stage. No sufficient reasons are given by the petitioners.”

(Emphasis Supplied)

14. The Statement of Objects and Reasons of the CC Act refers to the need for expeditious disposal of commercial disputes. The Court cannot be



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oblivious of the Objects and Reasons for which the CC Act was enacted. Needless to say, the CC Act being a special statute must operate with full thoroughness in respect of commercial disputes. The discretion vested in the Court under Order XI Rule 10 CPC as amended by the CC Act is thus required to be exercised in consonance with the Objects and Reasons of the CC Act of ensuring the expeditious disposal of commercial disputes.

15. The Additional Documents sought to be placed on record are records of Defendant No. 2 and pertain to the period 2007-08 to 2011-12. Defendant No. 2 has not made any averment with regard to the steps that were taken by Defendant No. 2 to procure the Additional Documents at the relevant time and place them on record, more so before the closure of the Plaintiffs' evidence.

16. It is also not the case of Defendant No. 2 that the existence of the Additional Documents came to Defendant No. 2's knowledge only after the closure of the Plaintiffs' evidence. The Additional Documents, being the Income Tax Returns of Defendant No. 2, are documents of which Defendant No. 2 would necessarily have been aware at all times and in power and possession of Defendant No. 2. The explanation that the Additional Documents were available only with the Chartered Accountant's office and said officer was not operating during the corona pandemic is, therefore, appears to be an afterthought and does not provide satisfactory justification for delay in production of the documents that pre-date the corona pandemic by several years.

17. The history of repeated adjournments and non-compliance with the Court's directions by Defendant No. 2 weighs heavily against the grant of any indulgence for belated filing of Additional Documents. The Court has



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already afforded multiple opportunities, which have not been utilized responsibly by Defendant No. 2.

18. No reasonable cause has been shown to justify taking on record of the Additional Documents at this stage. Entertaining the present Application would be contrary to the orderly conduct of proceedings under the CC Act and would also occasion prejudice to the Plaintiffs.

19. Hence, the Application is dismissed.

I.A. 34208/2024

20. I.A. 34208/2024 is an Application filed by Defendant No. 2 under Order XVI Rule 1 read with Section 151 of CPC for summoning of witnesses to prove the Additional Documents.

21. Given the order passed in I.A. 34207/2024 above, I.A. 34208/2024 has become infructuous and is, accordingly, dismissed.

22. The Applications stand disposed of.

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23. List before the learned Joint Registrar (Judicial) for recording of evidence, on 12.01.2026.

TEJAS KARIA, J

NOVEMBER 24, 2025
‘HK’