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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CS(COMM) 193/2023 & I.A. 46548/2024 I.A. 5949/2025

M/S MLI LOGISTICS INDIA PVT LTD .....Plaintiff  
Through: Mr. Ray Vikram, Mr. Akshat  
Chaudhary, Mr. Harshvardhan, Advs.  
versus

SARR FREIGHTS CORPORATIONS & ANR. ....Defendants  
Through: Mr. Karan Luthra, Mr. Rohan Dua,  
Mr. Yogesh Malik, Advocates for D-1  
Mr. Abdul, Ms. Riyal, Advs. for D-2.

**CORAM:**  
**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**ORDER**

% **09.05.2025**

**I.A. 5949/2025**(Application under Order XI Rule 1(5) and Order XI Rule 1(1)(c)(ii) of the CPC)

1. This order is being passed in continuation of the order dated 01.05.2025.
2. Learned counsel for the Non-Applicant/Defendant No.1 states that whereas it is a matter of record that the additional documents sought to be placed on record had been filed by the Plaintiff even prior to the Defendant No.1 filing its written statement, he states, however, the Plaintiff has failed to show any reasonable cause for not filing the said additional documents at the very inception along with the paper-book.
  - 2.1. He states it appears that the Plaintiff is relying upon these additional documents to establish privity of contract between the Defendant No.1 and the Plaintiff.
3. In reply, learned counsel for the Plaintiff states that Plaintiff had filed I.A 6346/2023 (i.e., Application under Order XXXIX Rules 1 and 2 of the



Code of Civil Procedure, 1908 (CPC)) and the Defendant No.1 herein had filed its reply to the said application elaborating on its defense that there is no privity of contract between the Plaintiff and Defendant No.1; and immediately in its rejoinder the Plaintiff rebutted the said plea by relying on these documents, which are essentially e-mail(s) sent by the Defendant No.1 to the Plaintiff, which as per the Plaintiff establishes the contractual relationship between the Plaintiff and Defendant No.1.

3.1 He states that no prejudice has been caused to the Defendant No.1 as the Defendant No.1 was well aware about the purpose of the Plaintiff's reliance on the e-mails; even prior to the filing of the written statement.

4. This Court has considered the submissions of the parties and perused the record.

5. The captioned application has been filed by the Plaintiff under Order XI Rule 1(5) and Order XI Rule 1(1)(c)(ii) as amended by the Commercial Courts Act, 2015 ('Act of 2015'). It would be apposite at this stage to refer the said provisions of law:

**“Order XI Rule 1(5):**

(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.

**Order XI Rule 1(1)(c)(ii):**

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

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

”

(Emphasis supplied)



6. In the facts of the present case, the Plaintiff along with the plaint filed an application (I.A 6346/2023) under Order XXXIX Rules 1 and 2 CPC seeking interim relief. The Defendant No.1 herein filed its reply to the said application and averred that Defendant No.1 has privity of contract only with the Defendant No.2 and no privity of contract with Plaintiff herein. It was further averred that since there is no privity of contract with Plaintiff, the Plaintiff can have no cause of action against the Defendant No.1.

6.1. In its rejoinder to the said reply of Defendant No.1, Plaintiff averred that there is privity of contract between the Plaintiff and the Defendant No.1 and to establish the same, the Plaintiff referred to two (2) email(s) dated 08.06.2022 and 21.06.2022 (which is now being sought to be placed on record as additional documents).

6.2. The said contention of the Plaintiff qua the email(s) dated 08.06.2022 and 21.06.2022 were dealt with by the Defendant No.1 in its written statement which was filed subsequent in time. Countering the arguments made in the written statement, the Plaintiff in its replication also referred to the said email(s) dated 08.06.2022 and 21.06.2022.

6.3. Since the application filed under Order XXXIX Rules 1 and 2 CPC was thereafter disposed of, the Plaintiff filed the captioned application to bring the said email(s) formally on record as additional documents.

7. A perusal of the stand taken by the Plaintiff in the rejoinder and replication while relying upon the email(s) dated 08.06.2022 and 21.06.2022 shows that the Plaintiff is clarifying its stand on the defence raised by the Defendant No.1 in its reply to application under Order XXXIX Rules 1 and 2 of CPC.

8. In the opinion of this Court, the reliance placed on the said email(s)



by the Plaintiff is not contrary to its pleadings in the suit. The issue of permitting the Plaintiff to additional documents in the commercial suit has been considered by this Court in several judgments and the Court has permitted the Plaintiff to file said additional documents. In fact, provisions of Order XI Rule 1(5) CPC as amended by Commercial Courts Act, 2015 and more specifically Order XI Rule 1(1)(c)(ii) of CPC therein contemplates that the plaintiff will be entitled to file on record additional documents to answer the case set up by the defendant.

8.1. In this regard, it would be appropriate to refer to the judgments of this Court (i) **Hassad Food Company Q.S.C. v. Bank of India**<sup>1</sup>; (ii) **Khurmi Associates (P) Ltd. v. Maharishi Dayanand Co-Operative Group Housing Society**<sup>2</sup>, (iii) **Bennet Coleman & CO. Ltd. v. Arg Outlier Media Pvt. Ltd**<sup>3</sup>.

8.2. This Court in the aforesaid judgments have allowed the Plaintiff to place on record additional documents in the following circumstances:

- (i) Reasonable cause and no sufficient cause has to be shown by the Plaintiff for not filing the documents with the plaint.
- (ii) Not after the issues have been framed in the suit.
- (iii) Not contradictory to the pleading of the Plaintiff already on record/In support of Plaintiff's existing pleadings.

9. This Court is of the firm opinion that since these additional documents i.e., email(s) were brought on record by the Plaintiff along with its relevant pleas in I.A. 6346/2023 to counter the defense/case set up by the Defendant No.1, the Plaintiff has shown reasonable cause for not filing the

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<sup>1</sup> 2019/DHC/5253.

<sup>2</sup> 2022 SCC OnLine Del 1011.



said documents with the Plaintiff. Further, these email(s) substantiate the existing plea/plea already setup by the Plaintiff in the suit.

9.1. The Defendant No.1 herein had sufficient opportunity to deal with these additional documents i.e., the email(s) in its written statement. The Defendant No.1 in its written statement which was filed thereafter, did deal with the email(s) and stated that, after scrutiny of the said email(s), it has come to light that indeed the said document was sent on behalf of the Defendant No.1 but by some unauthorized persons in connivance with the Plaintiff.

9.2. Admittedly, in the facts of the present case, issues have yet not been framed.

10. This Court therefore, finds sufficient ground for allowing this application and taking these additional documents on record.

11. Learned counsel for the Defendant seeks two (2) weeks' time to file affidavit of admission/denial of these additional documents. It is ordered accordingly.

12. The application is disposed of with the aforesaid directions.

**CS(COMM) 193/2023**

13. Parties are directed to file their Joint Document Schedule within six (6) weeks.

14. List before learned Joint Registrar on **22.07.2025**.

**MANMEET PRITAM SINGH ARORA, J**  
**MAY 9, 2025/msh/sk**

*Click here to check corrigendum, if any*

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<sup>3</sup> 2023/DHC/001726.