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

+ **CS(COMM) 1146/2018 & I.A. 20824/2023**

EICORE TECHNOLOGIES PVT. LTD. & ORS.Plaintiffs

Through: Mr. J. Sai Deepak, Ms. Manvi Adlokha, Mr. Debarshi Dutta & Mr. Avinash K. Sharma, Advs.

versus

EEXPEDISE TECHNOLOGIES PVT. LTD. & ORS.Defendants

Through: Ms. Vrinda Pathak, Ms. Sandhya Kukreti, Ms. Ahaana Singh Rana & Ms. Vanshika Puri, Advs. for D- 1 to 7 & 12-19.

Mr. Divyakant Lahoti and Mr. Kumar Vinayakam Gupta, Advs. for D-8 and 9.

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CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

29.10.2024

MINI PUSHKARNA, J:

I.A. 20824/2023 (Application seeking leave to file the additional documents)

1. The present application has been filed on behalf of the plaintiffs under Order XI Rule 1(5) read with Section 151 of the Code of Civil Procedure, 1908 ("CPC"), as amended by the Commercial Courts Act, 2015, praying for leave of this Court to file additional documents.

2.1 On behalf of the plaintiffs, it is submitted that the present suit has



been filed seeking injunction and damages against the defendants on account of infringement of the copyright and other intellectual property rights of the plaintiffs, by the gross breach of confidence and trust committed by the defendants.

2.2 It is the plaintiffs' case that the defendant nos. 4, 6, 8, 10, 12 and 14-19, were formerly employed with the plaintiffs. During the course of their employment, the defendants had access to the plaintiffs' proprietary software, its source code, documentation, confidential data and trade secrets. The defendant employees clandestinely setup competing business entities, i.e., defendant nos. 1 to 3, when they were still employed by the plaintiffs. The defendants misused their association with the plaintiffs to misrepresent at large that they are associates of plaintiffs and diverted legitimate business of the plaintiffs to defendant nos. 1 to 3.

2.3 It is submitted that defendant nos. 8 and 9 have denied these submissions. Thus, plaintiffs have filed their replications to the written statements of defendant nos. 8 and 9. The plaintiffs seek to rely upon certain additional documents filed with the replications that are relevant and material, to answer the case setup by defendant nos. 8 and 9 in their written statement.

2.4 It is submitted that the need for filing such documents arose only on account of the stand taken by the defendants in the written statement. The provisions of the CPC entitled the plaintiffs to file documents in response to a case setup by the defendants after filing of the plaint. The said additional documents have been relied upon by the plaintiffs to answer the defendants' case, and are also otherwise, relevant for proper and effective adjudication of dispute between the parties.



2.5 The additional documents were not filed earlier due to oversight and error of the earlier counsels.

3.1 Per contra, learned counsel appearing for defendant nos. 8 and 9 has vehemently opposed the present application. It is submitted that the plaintiffs had filed an application earlier also, for bringing on record certain additional documents. There is no justification for not filing the documents in question earlier.

3.2 The plaintiffs have not shown any reasonable cause for not filing the documents earlier. The documents sought to be brought on record were always in the power, possession, control and custody of the plaintiffs.

3.3 Though document no. 4 is of the year 2019, no explanation has been given by the plaintiffs as to why such document was not presented on an earlier occasion. The said document could have been filed with the earlier application filed for additional documents.

3.4 Documents have been belatedly filed by the plaintiffs only to mislead this Court. The same ought not to be taken on record.

4. I have heard learned counsels for the parties and have perused the record.

5. The documents, which are now sought to be brought on record by way of the present application, are as follows:

I. Document 1: Emails Dated 6th December, 2016, 8th December, 2016, 22nd December, 2016 and 28th December, 2016.

II. Document 2: Documents pertaining to Dhanshree Financial Services.

III. Document 3: Emails Dated 27th March, 2017 and 14th March, 2017 exchanged with defendant no. 8.

IV. Document 4: Forensic Report dated 8th April, 2019.



6. The present suit had been filed by the plaintiffs on 18th September, 2018. Thus, it is manifest that except document no. 4, all the other documents relate to the period prior to the institution of the present commercial suit. The plaintiffs have failed to explain or justify as to what prevented the plaintiffs from filing the aforesaid documents, along with the plaint. No reasonable cause has been shown for non-disclosure of these documents at the time of filing the plaint.

7. The plea taken by the plaintiffs, with regard to oversight and error committed by the earlier counsel, cannot be a ground to bring on record the additional documents. Further, the plea that the need for filing the documents arose only on account of the stand taken by the defendants in the written statement, and the additional documents have been relied upon by the plaintiffs to answer the defendants' case, cannot be accepted as a reasonable cause for non-disclosure along with the plaint. These pleas and justifications, as sought to be raised by the plaintiffs, cannot be a ground to permit filing of these additional documents under the Commercial Courts Act, 2015.

8. As to what constitutes reasonable cause within the ambit of Order XI of CPC, as amended by the Commercial Court Act, 2015, this Court in the case of *Bela Creation Pvt. Ltd. Versus Anuj Textiles*¹, held as follows:

“xxx xxx xxx

24... **“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.**

xxx xxx xxx”

(Emphasis Supplied)

¹ 2022 SCC OnLine Del 1366



9. The documents 1 to 3, as sought to be brought on record as additional documents by way of the present application, are documents, which beyond doubt, existed prior to the institution of the present suit and were in power, possession, control and custody of the plaintiffs. Therefore, these documents cannot be taken on record in the absence of establishing a reasonable cause for non-disclosure along with the plaint, by the plaintiffs.

10. This Court further notes that there has been an inordinate delay in filing the present application before this Court. The present application was filed only on 16th October, 2023, after a period of about one year from filing of the replication on 16th December, 2022. It is evident that the documents have been filed by the plaintiff with the replication, in order to fill the lacunas of the plaintiffs' case, which is not permissible under stringent deadlines of the Commercial Courts Act, 2015.

11. The provisions and timeline of the Commercial Courts Act are required to be strictly construed. Additional documents cannot be taken on record in commercial proceedings, if there is lack of reasonable cause and negligence in non-filing of documents, at an earlier stage.

12. Thus, emphasizing the need for enforcing Rules legislated for commercial suits, and holding that if commercial courts continue to show leniency, the commercial suits will start suffering from the same malady which the ordinary suits have suffered, this Court in the case of *Entertainment Network (India) Ltd. Versus HT Media Limited*², has held as follows:

“xxx xxx xxx

² 2022 SCC OnLine Del 2636



22. In this context, I may refer to the judgment in *Nitin Gupta (supra)* wherein post framing of issues, Plaintiff had sought to file a letter dated 02.09.2013. Defendant had opposed the application *inter alia* on the ground that while filing the suit, Plaintiff had nowhere disclosed that there was any such document addressed by the Defendant to the Plaintiff and that no reasonable cause as required under Order XI Rule 1(5) of the Act was made out for taking the additional documents on record. **The Court found merit in the contention of the Defendant that the Plaintiff is entitled, under Order XI of the Act, as applicable to commercial suits, to file a document belatedly only if it establishes 'reasonable cause' for non-disclosure along with the plaint. Application was disallowed by the Court and one of the factors, which weighed with the Court to come to the said conclusion, was that Plaintiff was unable to show a reasonable cause for non-disclosure of the document along with the plaint. What is significant is the observation of the Court in para 38 of the judgment that unless the Commercial Divisions while dealing with the commercial suits start enforcing Rules legislated for commercial suits and refuse to entertain applications for late filing of documents where they do not disclose reasonable cause and continue to show leniency, Commercial Courts will start suffering from the same malady which the ordinary suits have suffered and the purpose of the Commercial Courts Act would be defeated. I may also quote from the judgment of a Co-ordinate Bench in *Great Gatsby Club of India v. Mahesh Prefab Pvt. Ltd., 2022 SCC OnLine Del 2099* as under:—**

“21. The court cannot dilute the rigour of the said provisions on any sympathetic or other considerations. It is presumed that these considerations were in the mind of the legislature when they enacted the Commercial Courts Act. There can be no charity beyond the law.”

xxx xxx xxx”

(Emphasis Supplied)

13. Thus, in the absence of any reasonable cause for non-disclosure along with the plaint, of documents 1 to 3, as enlisted in Para 5 hereinabove, the said documents cannot be taken on record.

14. Document no. 4, as noted aforesaid, is a Forensic Report dated 8th April, 2019, which document is subsequent to the filing of the plaint. The



2024:DHC:8385



said document is, accordingly, permitted to be taken on record.

15. Considering the aforesaid detailed discussion, the present application is partly allowed, in terms of the aforesaid.

CS(COMM) 1146/2018

16. List before the Joint Registrar (Judicial) on 20th November, 2024.

OCTOBER 29, 2024
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MINI PUSHKARNA, J