

HIGH COURT OF DELHI

Date of Decision: February 29, 2024

CORAM: HON'BLE MS. JUSTICE SHALINDER KAUR

CM(M) 1691/2023, CM APPL. 53535/2023 (stay)

SURENDER KUMAR ...PETITIONER

Versus

ANITA CHHABRA & ORS. ...RESPONDENTS

CM(M) 2077/2023 and CM APPL. 65133/2023 (stay)

SURENDER KUMAR ...PETITIONER

Versus

ANITA CHHABRA & ORS. ...RESPONDENTS

Legislation:

Article 227 of the Constitution of India, 1950

Order VII Rule 14(3), Order VI Rule 17, and Order XI Rule 5 of the Code of Civil Procedure, 1908 (CPC)

Commercial Courts Act, 2015

Subject: Judicial review under Article 227 of the Constitution of India concerning the closure of the petitioner's right to cross-examine witnesses and dismissal of an application under Order VII Rule 14(3) CPC in a commercial suit for recovery of Rs. 66,00,000.

Headnotes:

Jurisdiction and Powers under Article 227 – Petitions challenging the orders of the Learned District Judge, Commercial Court – Alleged wrongful closure of the petitioner's right to cross-examine witnesses and dismissal of an application under CPC [Para 1].

Facts of the Case – Dispute over agreements and payments for property transactions – Involvement of late Guru Dutt Chhabra and subsequent legal notices for recovery issued by his legal heirs [Paras 3-5].

Civil Procedure – Order VII Rule 14(3) and Order VI Rule 17 CPC – Delhi High Court Decision – The Delhi High Court addressed two key issues: the right to cross-examine a witness in a civil suit, and the admissibility of

additional documents not originally filed with the plaint in a commercial dispute. [Para 10-17, 18-29]

Cross-Examination Rights – Upheld – The court overturned the Trial Court's decision that denied the petitioner the right to cross-examine a witness, reaffirming that cross-examination is a fundamental right in a fair trial and should not be denied hastily. [Para 15-16]

Admissibility of Additional Documents – Ruled – The High Court considered whether additional documents, not originally disclosed with the plaint but brought in through an amendment, should be admitted. It concluded that the amendment allowed by the court implicitly permitted reliance on these new documents, thereby upholding the trial court's decision. [Para 18-29]

Decision – Reinstatement of Cross-Examination Rights; Admission of Additional Documents – The court set aside the Trial Court's order denying the petitioner's right to cross-examine and upheld the decision to admit additional documents into the record, subject to the test of admissibility and relevancy. [Para 16, 29]

Referred Cases:

N/A

Representing Advocates:

Petitioner: Mr. Samrat Nigam and Mr.Rohit Khurana

J U D G M E N T

1. The present petitions have been filed under Article 227 of the Constitution of India, 1950 by the petitioner for setting aside the order dated 16.09.2023 and 12.12.2023 passed by the court of Learned District Judge Commercial Court, Central, Tis Hazari Courts, Delhi in CS (Comm.) No. 2718/2021, titled as *“Anita Chhabra & Ors. V. Surender Kumar”* whereby the Learned District Judge (hereinafter referred as “Trial Court”), closed the right of the petitioner herein to cross examine the witness and dismissed the application under Order VII Rule 14 (3) of Code of Civil Procedure, 1908 (*hereinafter referred as “CPC”*) respectively.
2. Petitioner herein is the defendant and respondents herein are the plaintiffs in CS (Comm) No. 2718/2021 which is pending adjudication before the Learned Trial Court.

3. It becomes pertinent to note the relevant facts for the purpose of adjudication of the present petition that are, the petitioner along with one Sumit Gumber and Dhiraj Gumber entered into an agreement dated 15.12.2010 with the predecessor in interest of the respondents herein namely; late Guru Dutt Chhabra for purchasing property bearing no. 109, measuring 170.15 sq yards situated in Banarasi Dass Estate, Timarpur, Delhi and a shop on the ground floor of the same property measuring 269 sq ft. for a consideration of Rs. 2,50,00,000/-. The respondents alleged that, late Guru Dutt Chhabra and the petitioner entered into another unregistered agreement dated 11.05.2011 qua the property bearing no. 1, Banarsi Dass Estate Market, Timarpur, Delhi-110054 admeasuring 210 sq yards for a consideration of Rs. 85,00,000/-.
4. It is the case of the respondents that, the petitioner gave an undertaking to late Guru Dutt Chhabra to the receipt of Rs. 66,00,000/- whereas it is mentioned therein that Rs. 40,00,000/- received in cash and Rs. 26,00,000/- from the bank. After the demise of Guru Dutt Chhabra on 04.12.2017, his legal heirs came to know about the aforesaid document that was allegedly executed between the petitioner and late Guru Dutt Chhabra.
5. Subsequently, respondents issued a legal notice dated 03.06.2018 to the petitioner for recovery of Rs. 66,00,000/-. A reminder notice dated 27.01.2021 was also sent to the petitioner for the recovery of the said amount. Petitioner replied to the said reminder notice on 12.02.2021. Respondents further issued a rejoinder to the reply to the notice filed by the petitioner on 23.02.2021.
6. Respondents filed a civil suit against the petitioner bearing no. 2718/2021 before the Learned Trial Court for recovery of Rs. 66, 00,000/-. Petitioner filed his written statement wherein, he denied the alleged amount claimed in the suit and raised preliminary objections regarding the maintainability of the suit filed by the respondents. On 19.08.2021, respondents filed an application under Order VII Rule 14 CPC to file some more documents i.e., copy of the sale deed and an affidavit of Saroj Gumber both dated 15.10.1997. The said application was dismissed vide order dated 04.12.2021 and the above-mentioned documents were not brought on record.
7. Respondents further filed an application under Order VI Rule 17 CPC for amendment of plaint to add that they have come to know after the passing of the order dated 04.12.2021 about the cheque book and the statement of account etc. of the deceased Guru Dutt Chhabra. Petitioner filed his reply to the said application and vehemently objected to it as the respondents have filed statements of truth stating that they have no such other documents in

their power and possession. Respondents filed review of the order dated 04.12.2021, which was also dismissed along with an application under Order VI Rule 17 CPC filed by the respondents vide order dated 08.04.2022. On the very same day, issues were also framed. Petitioner in his defense, filed an application under Order VII Rule 11 CPC for rejection of the plaint which was also dismissed on 25.05.2022 by the learned Trial Court.

8. The respondents did not stop and filed CM (M) No. 548/2022 against the order dated 04.12.2021 passed by the learned Trial Court for dismissal of the application under Order VII Rule 14 CPC in CS (Comm.) No. 2718/2021. This court vide order dated 26.09.2022 dismissed CM (M) No. 548/2022 being devoid of merits and upheld the dismissal order of the said application. Along with the said petition, respondents by way of CM(M) No. 560/2022 challenged the order dated 08.04.2022 passed in CS(Comm) No. 2718/2021 whereby the learned Trial Court dismissed the application of the respondent filed under Order VI Rule 17 CPC. However, this court vide its order dated 12.01.2023 allowed CM(M) No. 560/2022 filed by the respondents and, petitioner was given liberty to take appropriate defense in the amended written statement sought by the respondents with respect to amendment in the plaint.
9. It is the case of the petitioner that, on 05.08.2023 respondents allegedly exhibited two documents that are pass book and statement of accounts of Late Guru Dutt Chhabra in evidence by way of affidavit of PW1, Anita Chhabra, in examination in chief, whereas no leave was granted by the learned Trial Court as those documents were not on record, nor filed with the suit neither any formal application was preferred to bring them on record. Subsequently, the petitioner through an application under Order VII Rule 14 (3) CPC challenged the exhibiting of those two documents and prayed to de-exhibit the document from the examination in chief of the respondents and not to rely and refer in the evidence. Vide impugned order dated 16.09.2023 the learned Trial Court insisted the petitioner to cross-examine the witness of the respondents, failing which serious repercussions would follow. The learned Trial Court thereby closed the right of the petitioner to cross-examine the witness and kept the matter pending for deciding the application under Order VII Rule 14(3) filed by the petitioner for de-exhibiting. Subsequently, the learned Trial Court vide second impugned order dated 12.12.2023 dismissed the application under Order VII Rule 14 (3) CPC filed by the petitioner. Both the aforesaid impugned orders are subject matter of the two above mentioned CM(M) 1691/2023 and 2077/2023 respectively.

10. At the outset, this Court proceeds to deal with the impugned order dated 16.09.2023.
11. Addressing the arguments in support of the prayer, the learned counsel for the petitioner submitted that, the Learned Trial Court did not appreciate that the right to cross examination is an indelible right of the parties and no adverse order against the same shall be passed in a haste at the time of trial. He further submitted that, there was no delay on the part of petitioner ever, rather it was the respondents who kept on dragging the matter by filing numerous applications before the Learned Trial Court.
12. The learned counsel further submitted that the learned Trial Court did not consider that the application under Order VII Rule 14(3) CPC is to be decided prior to the commencement of the cross examination, and remained adamant that PW1 be cross examined first. It is further submitted that the learned Trial Court did not appreciate that when a witness is called for cross examination under the Indian Evidence Act, which gives a right to the opposite party to cross examine the witness for just and fair trial, unless there is absolute laxity, the right to cross examination should not have been denied and hence, the Learned Trial Court should have give an opportunity to the petitioner to defer the cross examination of the witness till the disposal of the application filed under Order VII Rule 14(3) CPC.
13. Learned counsel for the respondents in response negated the submissions and submitted that the petitioner was just interested to delay the matter as he does not want to cross-examine the witness and thus had been moving frivolous application to stall the hearing of the case. Hence, the learned Trial Court rightly closed the right of the petitioner to cross examine the witness.
14. While closing the right of the petitioner to cross examine PW1, the Learned Trial Court has made the following observations vide the impugned order dated 16.09.2023:

“5. It is pertinent to mention that initially the issues were framed on 08.04.2022 and one of the issues is regarding limitation. After framing of issues, the case was adjourned to 12.05.2022. The plaintiff, despite being aware that an issue regarding limitation had been framed, moved an application under Order 7 rule 11 CPC for rejecting the plaint as it was bailed by period of limitation. The application was moved on 12.05.2022 itself i.e. on the day when the evidence was to be recorded. It was dismissed by the court on 25.05.2022 with a cost of Rs. 5,000/- observing that the application was frivolous and baseless.

The same conduct has been repeated by the defendant by moving the present application. Despite being told by the court that the said application

would be considered on the next date after filing of the reply and that if the application was allowed, the disputed documents would automatically be removed from the record and that he should cross-examine PW 1, but he insisted for disposal of the application first. It shows that the defendant does not want to cross-examine PW

1. So, the primary purpose of the application seems that the defendant wants to take adjournment so that he may not cross-examine PW 1.

6. In view of the above discussion, right of defendant to crossexamine his closed.”

15. It is distinctly clear from the reading of the impugned order that the learned Trial Court has adopted a overly technical approach in closing the right of the petitioner to cross examine PW1. The learned counsel was addressing a legal issue before the court, it appears that learned Trial Court got carried away with the impression that the petitioner is habitual in moving applications with an intention to delay the proceeding of the case. It is not in dispute that both the parties to lis have been filing applications under one or the other provisions of law, and rightly so, for determination of the issues as appearing in the pleadings. Importantly, the learned Trial Court ultimately had adjourned the case for disposal of the application moved on behalf of the petitioner under Order VII Rule 14(3) CPC raising a primary issue with respect to de-exhibition documents recorded during the examination in chief, of PW1 to a next date of hearing and thus could have also granted an opportunity to the petitioner to conclude the cross examination of PW1.

16. The cross examination of a witness is to be conducted to elucidate the credibility of testimony of a witness and is an important tool to extract truth from the evidence of the witness. Therefore, such an important right cannot be denied to a litigant in a nonchalant way. The impugned order, thus, deserves to be set aside, consequently, the petition allowed.

17. Now, this Court begins to deal with the impugned order dated 12.12.2023.

18. To proceed with the arguments, the learned counsel for the petitioner submitted that, the learned Trial Court did not appreciate the mandate of Order XI Rule 5 of the Commercial Courts Act, 2015 which stipulates that the plaintiff shall not be allowed to rely on documents which were in the plaintiff's power, possession and control or custody and not disclosed along with the plaint. It was submitted that as per Statement of Truth, respondents had no other documents in their power and possession at the time of filing suit.

19. It was further submitted that the learned Trial Court failed to understand that the question of filing additional documents in the present suit has already been decided by this court in CM (M) No. 548/2022 vide judgment dated 26.09.2022. Moreover, by way of Order VI Rule 17 CPC, new documents cannot be taken on record or filed during the pendency of a commercial suit, thus in the aforesaid circumstances and background of the case, the additional documents could not have been allowed to be exhibited by the learned Trial Court and respondents cannot place reliance on the said documents. Necessarily, these documents were neither filed with the suit nor relied upon by the respondents though, were filed in support of the application under Order VI Rule 7 CPC.
20. Conversely the learned counsel for the respondents justified the impugned order and submitted that respondents moved a petition against the dismissal order of their application under Order VI Rule 17 CPC before this Court which was allowed and eventually, they were allowed to amend the plaint.
21. It is further submitted that the application under Order VI Rule 17 CPC was moved on the ground that the respondents had come into possession of some cheque book which showed that the deceased predecessor-in-interest namely, Guru Dutt Chhabra had paid by cheques to the defendant an amount of Rs. 48,35,000/- and not only Rs. 26,00,000/- as acknowledged by the petitioner. Allowing the petition means that this court had allowed respondents not only the amendment to the plaint but also the documents on which the amendment was based. Thus, there is no illegality in the impugned order, accordingly, the findings of the learned Trial Court are to be upheld.
22. It is relevant to consider the observations made by the learned trial Court vide the impugned order dated 12.12.2023 which are as follows:-

“3. It is mentioned in para no. 5 of application under Order VI rule 17 CPC moved on 08.12.2021 that the plaintiffs searched the cheque books in their house on 04.12.2021 and after coming into possession of the same, they came to know that the deceased, during his lifetime, had paid Rs. 48,35,000/- to the defendant and not only Rs. 26,00,000/- as mentioned in the undertaking/acknowledgement. Though the words 'cheque book' is mentioned in para no. 5 of the application but the documents annexed with the application were two cheque books, account statement and certificate under Section 65-B of Indian Evidence Act in support of account statement. Hence, the words 'cheque book' mean the passbook. So, the; amendment application of the plaintiff was based upon some facts which they came to know after discovery of two passbooks. Though the said application was dismissed by this court but the same was allowed by Hon'ble High Court vide order dated 12.01.2023. Perusal of para 4 of that order shows that the Hon'ble High Court had granted that relief to the plaintiff as it was based upon new

documents. So, allowing of a particular relief on the basis of some documents means that the court had allowed the said party to rely upon those documents also. Hence vide order dated 12.01.2023, deeming permission had been given to the plaintiff to rely upon passbooks, ledger account and certificate under Section 65-B of Indian Evidence Act. Those documents cannot be taken off the record. The net result is that the application is dismissed.”

23. The main contention raised on behalf of the petitioner is that the respondent has placed on record additional documents that were admittedly in the power, custody, possession and control of the respondent, he was required to submit to the rigour of Order XI Rule 1(5) CPC which he has failed to do so. Therefore, the additional documents placed on record are to be de-exhibited. Also, that the said documents i.e., pass book and statement of accounts of Late Guru Dutt Chhabra were filed on the record without seeking leave of the Court as provided under law which were filed only in respect of the application under Order VI Rule 17 CPC, therefore, it is impermissible to circumvent the provision of Order XI Rule 11(5) CPC by taking on record the documents annexed with application under Order VI Rule 17 CPC
24. The respondents have pleaded that the additional documents were part of the application moved under Order VI Rule 17 CPC and the amendment was also sought on the basis of the aforesaid documents which has been allowed vide order dated 12.01.2023 passed by this Court and order has attained finality. Therefore the petitioner cannot dispute and reagitate the issue of placing the documents i.e., pass book and statement of accounts of Late Guru Dutt Chhabra on the record which has already been allowed by the order dated 12.01.2023 of this Court.
25. Needless to say, the Commercial Courts Act, 2015 being a special statute must operate with full thoroughness in respect of commercial suits. The Court cannot be oblivious of the objects and reasons for which the Commercial Courts Act was enacted. The Statement of Objects and Reasons of the Commercial Courts Act specifically refers to the need for speedy disposal of commercial disputes of specific value. In order to achieve the said object, various provisions of the Code of Civil Procedure, 1908 have been amended and made applicable to the commercial suits. It is equally true that while allowing an application under Order XI Rule 1(1) CPC, it is pertinent to look for a reasonable cause, if has been specifically pleaded and a good cause is made out that the litigant could be permitted to place on record documents at a later stage.

26. In the present case, it is found that an application was moved by the respondents under Order VI Rule 17 CPC seeking amendment of the plaint while relying upon certain additional documents. The documents i.e., pass book and statement of accounts of Late Guru Dutt Chhabra were annexed with the application moved under Order VI Rule 17 CPC which fact has been acknowledged by the petitioner in his reply to the application while disputing the plea of the respondent to place the said documents on record. It is relevant to reproduce para 5 of the reply to para 5 of the application under Order VI Rule 17 CPC, which reads as under:-

“5. Para no. 5 of the application is wrong and denied. It is wrong that on 04.12.2021 the plaintiffs came into the knowledge of cheque book which clearly reflect that the amount paid by the deceased Late Sh. Guru Dutt Chhabta during his lifetime is R.s. 48,35,000/- (Rs. Fourty Eight Lacs Thirty Five Thousand only) and the same is the amount was not mentioned in undertaking. It is submitted that the plea now taken by the plaintiffs is contradictory to the contents of the alleged undertaking dated 10.10.2016 on the basis of which the suit has been filed by the plaintiffs. That in the undertaking dated 10.10.2016 it is mentioned that the receivable amount was Rs. 66,00,0130/- (Rs. Sixty Six Lacs only) while through this amendment the plaintiffs wants to incorporate the facts that instead of Rs. 66,00,000/- (Rs. Sixty Six Lacs only), it is Rs. 88,35,000/- (Rs. Eighty Eight Lacs Thirty Five Thousand only) which is receivable by the plaintiffs. That the amendment sought by the plaintiffs require fresh suit to be instituted for Rs. 88,35,000/(Rs. Eighty Eight Lacs Thirty Five Thousand only). Moreover, when the cheque book and passbooks/ statement of account were available with the plaintiffs, why it was not filed alongwith the original suit. Through this amendment the plaintiffs wants to bring on record certain document like cheque book, passbook, statement of account on the records while these documents were care and custody of the plaintiffs at the time when the suit instituted. These documents and the amendment which has been sought by the plaintiffs cannot be allowed in this manner. The application is liable to be dismissed.”

27. The said application under Order VI Rule 17 CPC came to be dismissed by the learned Trial Court vide order dated 08.04.2022, however, by way of CM(M) 560/2022 preferred by the respondents, the said application was allowed vide order dated 12.01.2023 observing as under:-

“4. In the present case, the petitioner is seeking amendment of the plaint in respect of averments relating to certain new documents which give rise to further alleged amounts to be recovered from the respondent/defendant, though in respect of the same transaction.

5. Be that as it may, this Court is not rendering any opinion on the merits of the matter and on the basis of the judgment of the Hon"ble Supreme Court in Life Insurance Corporation of India (supra), the petition is allowed. The impugned order dated 08.04.2022 passed by the learned Trial Court in CS (Comm.) No. 2718 of 2021 is set aside.

6. The Trial Court is directed to permit petitioners file the amended plaint and proceed further in accordance with law.
 7. Needless to say that the respondent/defendant would be entitled to take all and any objections as available under law by filing the amended written statement.”
28. In due consideration of above discussion, it is clear that amendment was allowed in respect of averments relating to certain new documents. The new documents filed alongwith the application under Order VI Rule 17 Code of Civil Procedure, 1908 are the passbooks and statement of account. Thus, while permitting the relief of amendment based on „new documents” this Court in CM (M) 1691/2023, therefore, allowed the respondents to place the documents annexed with application under Order VI Rule 17 CPC on record.
29. In view of the above, this Court is unable to sustain the submissions made by the petitioner while challenging the aforementioned impugned order. However, by way of repetition, the order dated 12.01.2023, makes it abundantly clear that petitioner is entitled to take all or any objection as available under law by filing the amended written statement. Therefore, the additional documents placed on record are subject to the test of Admissibility and Relevancy. With above observations, the petition is dismissed.

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