



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

% *Reserved on: 28th February, 2024*

Pronounced on: 15th May, 2024

+ **CS(COMM) 53/2020**

CEC-CICI JV & ORS.Plaintiffs

Through: Mr. T.K. Ganju, Senior Advocate
with Mr. Gaurav Juneja, Mr. Arjit
Oswal and Ms. Muskan Narang,
Advocates for P-1.

versus

ORIENTAL INSURANCE CO. LTD.Defendants

Through: Mr. Apoorv Sarvaria and Ms. Simran
Chadha, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

I.A. 8546/2023 (under Order XI Rule 1 (as amended by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015) and Section 151 of the Code of Civil Procedure, 1908 filed by the plaintiff seeking permission to bring additional documents on record)

1. The application under Order XI Rule 1 (as amended by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015) and Section 151 of the Code of Civil



Procedure, 1908 (*hereinafter referred to as 'CPC'*), has been filed by the plaintiff, for placing on record additional documents.

2. It is submitted that the plaintiff No. 1, which is a Joint Venture between the plaintiff No. 2 and 3, had filed a Suit for Recovery of Rs.17,43,18,869/-. The claim of the plaintiff, under CAR Policy was rejected by the defendants, solely on the ground that the claims paid to the residents without the defendant's prior written consent and thus, the defendant was not liable to indemnify the losses caused to the plaintiff No. 1.

3. It is asserted that the Rejection Letter dated 14.05.2019, which is prior to the filing of the Suit, did not raise any objection/dispute particularly regarding the quantification of the Claim amount or the validity/responsibility of the amounts paid to third parties and/or whether the plaintiff No. 1 is a legal entity entitled to sue and claim the amounts. These pleas have been raised by the defendants for the first time in its Written Statement filed on 22.06.2020. Though the plaintiff with great difficulty because of the on-going COVID-19 Pandemic, somehow struggled to file its Replication on 21.09.2020, but because of the documents are voluminous and are lying scattered, the same could not be placed on record earlier.

4. The plaintiff has submitted that because of the defence taken by the defendants, the documents namely:

- (i) the copy of the JV Agreement, PAN Card and GST Registration Number,
- (ii) Letter dated 27.01.2022, issued by DMRC to plaintiff No. 1 and the Letter dated 26.04.2022, written by the plaintiff No. 1 to DMRC; and



(iii) the Pre-constructions Survey Reports for some of the affected buildings on the sample basis and the documents forming part of Annexure E to Letter dated 20.01.2020, (which has already been filed on record along with the Complaint) have become relevant to be placed on record. The relevancy of the documents, is explained as under:-

Defendant's Pleading	Relevant Additional Document
Defendant has denied that the Plaintiff No. 1 has incurred a cost of INR 17,43,18,869	a. Letter dated 27.01.2022 issued by DMRC to Plaintiff No. 1 b. Letter dated 26.04.2022 issued by Plaintiff No. 1 to DMRC c. Relevant documents forming part of Annexure E to letter dated 20.01.2020 (Document No. 30 filed with Complaint)
The Defendant has alleged that it was not given any opportunity to examine the extent of damage caused and if the work of the Plaintiff No. 1 was the sole cause behind such alleged damage	d. Pre-construction Survey Reports for the affected buildings on a sample basis
The suit is not maintainable as the Plaintiff No. 1 is an unregistered	e. Copy of JV Agreement entered between Plaintiff Nos. 2 and 3



partnership firm of the Plaintiffs No. 2 and 3	f. Copy of PAN Card and GST Certificate of Plaintiff No. 1
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5. It is submitted that the issues are yet to be framed and therefore, the plaintiffs be permitted to place on record these additional documents, which are material for effective adjudication of the claims.

6. **The defendants in their Reply**, have opposed the application, on the ground that a similar application in Commercial Suit bearing CS(COMM) 7/2020, titled 'CEC-CICI JV & Ors. vs. Oriental Insurance Co. Ltd.', has been dismissed by this Court *vide* its Order dated 15.05.2023 for having been produced belatedly. It is further asserted that these documents have been in possession of the plaintiffs and there is no reason given as to why the same were not placed on record along with the Replication.

7. Thus, the application is liable to be dismissed.

8. **The plaintiffs in the Rejoinder** have admitted that a similar application had been filed for placing on record the additional documents in a similar Commercial Suit bearing CS(COMM) 7/2020 it was also asserted that the need to file these additional documents, has arisen on account of the additional pleas set-up by the defendants in its Written Statement as before this there was no challenge to the legal entity of the plaintiff No. 1 and the quantification of the insurance amount. Admittedly, the application was dismissed *vide* *vide* Order dated 15.05.2023,

9. **It is asserted that** reliance on the said Order is misplaced as the documents in that Case had been placed along with the affidavit of evidence of the witnesses, but in the present Case, issues are yet to be framed and therefore, the documents may be permitted to be taken on record.



10. **Submissions heard.**

11. The plaintiffs have filed the Commercial Suit on 30.01.2020. The Written Statement has been filed on 22.06.2020, and the Replication has been filed on 21.09.2020, during the COVID period.

12. The explanation given on behalf of the plaintiffs for the necessity of filing these documents, is because of the defence taken in the Written Statement. This explanation could have been considered valid had these documents been filed along with the Replication on 21.09.2020.

13. These documents pertinently have been filed after a delay of about one and a half years excluding the Covid period, on 17.03.2023. There is no explanation whatsoever to explain this inordinate delay when in a similar Suit filed in December, 2019 raising same controversy, a similar application for filing of additional documents, was filed on 07.09.2021 and thereafter on 29.06.2022 and lastly on 14.07.2022.

14. First and foremost, the nature of controversy being the same, the plaintiffs were well aware of the defences which had been taken by the defendants and were also aware of the documents that were required to be filed by it, to counter the defences taken in the Written Statement, despite which the plaintiffs did not choose to file these documents along with the Replication. This is more relevant because similar application for placing these documents in the other Civil Suit, was filed in September, 2021 and thereafter, in June and July 2022.

15. The conduct of the plaintiffs, reflects that despite being aware that these documents are required for adjudication of its claim, since the Written statement was filed in 2021 it has chosen to sit back till 17.03.2021, when this application has been filed. To say that it took time to collate the



Documents, is on the face of it incorrect as similar application for placing on record same documents in another case on 07.09.2021, thereby implying that the documents were well in the possession even in 2021 and did not come in possession only in 2023, as asserted.

16. Further, Order XI Rule 1 (c) (ii) read with Order XI Rule 5 of CPC under the Commercial Courts Act, 2015, mandates that the plaintiffs shall file a list of all the documents in its power, possession, control and custody along with the Plaint thereof. Further, Order XI Rule 1(4), CPC, permits additional documents to be filed by the plaintiff within 30 days of filing of the Suit, subject to the grounds of leave of the Court.

17. In the present Case, there is no explanation forthcoming as to what prevented the plaintiffs from filing these documents along with the Replication or even if the period of COVID, is to be excluded then too, by March, 2022. The plaintiffs despite being aware of the relevance of these documents, has chosen to sit back till March, 2023.

18. Furthermore, this Court in the Commercial Suit has no discretion whatsoever to permit taking of the documents on record, after 30 days of initial filing of the Plaint. In these circumstances, the application of the plaintiffs for filing the additional documents, is barred by the express provisions of Order XI Rule 1 of CPC and cannot be allowed as has also been held by the Apex Court in the Case of Sudhir Kumar @ S. Baliyan vs. Vinay Kumar G.B., 2021 SCC OnLine SC 734 and Nitin Gupta vs. Texmaco infrastructure and Holding Limited, 2019 SCC OnLine DEL 8367.

19. The application is, therefore, dismissed.



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20. Issues were framed on 21.03.2023 during the pendency of this Application. Be listed before the learned Joint Registrar for recording of the evidence as on 30th July, 2024.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 15, 2024/RS