



CR NO. 2227 OF 2025

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR NO. 2227 OF 2025
RESERVED ON: 15.05.2025
PRONOUNCED ON: 26.05.2025

M3M India Private Limited

.... Petitioner

Versus

MGF Developments Limited & Ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By:- Mr. Ashish Chopra, Senior Advocate with
Ms. Rupa Pathania, Advocate for the petitioner.

Mr. Amandeep Singh Talwar, Advocate for
Respondents No.1 and 2.

Mr. Sumeet Jain, Advocate,
Mrs. Ashima Mor, Advocate and
Mr. Gyan Parkash Saini, Advocate for
Respondent No.3.

Mr. Amit Jhanji, Sr. Advocate with
Ms. Priyanka Kansal, Advocate and
Mr. Harshit Joon, Advocate for
Respondent No.4.

DEEPAK GUPTA, J.

Petitioner herein is the plaintiff in civil suit No. 4 of 2023 titled '*M3M India Private Limited Vs. MGF Developments Limited & Ors.*', pending before learned Additional District Judge-cum-Presiding Officer, Exclusive Commercial Court at Gurugram exercising jurisdiction under Commercial Courts Act, 2015 [*in short – 'commercial court'*]. The petitioner is aggrieved by the order dated 05.03.2025 (*Annexure P-1*), whereby Commercial Court has dismissed the application filed by the said petitioner under Order XI Rule 1 (5) CPC for producing certain additional documents.

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2.1 Defendants No.1 and 2 (*respondents N: 1 & 2 herein*) were owner of the suit land. Collaboration agreement dated 23.11.2016 (Annexure P-2) was executed between the plaintiff and defendants No.1 & 2 regarding the said land; and an amount of ₹88 crores was paid by the plaintiff to the said defendants, which as per plaintiff's case was a refundable security. Irrevocable power of attorney was executed by defendant No.1 & 2 in plaintiff's favour on the same day i.e. 23.11.2016. The plaintiff was represented by one Mr. Ravi Khera. On 24.11.2016, a supplementary agreement is purported to have been executed between the parties, whereby refundable security deposit under the collaboration agreement was made non-refundable. Plaintiff claims that Ravi Khera had tendered his resignation on 25.05.2017. It is further the allegation that cancellation agreement dated 18.12.2017 was later on executed between the plaintiff through Ravi Khera and defendants No.1 & 2, thus, cancelling the collaboration agreement.

2.2 Later on, out of total 61 *kanals* 18 *marlas* of the suit land, defendants No.1 & 2 sold 60 *kanals* 7 *marlas* to defendant No.3 (*respondents N: 3 herein*) on 09.09.2021, who was granted license to develop the plotted colony by Director Town and Country Planning.

2.3 Cancellation agreement dated 18.12.2017 is alleged by the plaintiff to be a forged document, having been prepared by the defendants No.1 & 2 in collusion with its erstwhile employee Mr. Ravi Khera, who had already resigned in May 2017. On a complaint moved by the plaintiff on 30.12.2021, FIR No. 3 dated 03.01.2022 under Sections 120-B, 406, 409, 420, 467, 468, 471 IPC was registered against defendants No.1 and 3, its Directors and Mr. Ravi Khera. CRM-M 4263 of 2022 was filed by defendant No.1 to quash the FIR before this High Court.

2.4 Plaintiff then filed civil suit No. 2770 of 2022 on 07.06.2022 before the Court of learned Civil Judge (Jr. Divn.), Gurugram seeking decree of declaration of his rights under the collaboration agreement. Defendants No.1 and 3 filed separate applications under Order 7 Rule 11 CPC contending that suit was not maintainable being a commercial dispute and so, same should have been brought before Commercial Court. The objection of maintainability was also raised in the

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written statement filed by defendants No.1 and 2 in October, 2022. Defendant No.3 pleaded itself to be a *bonafide* purchaser.

2.5 The plaint of aforesaid suit was returned by the learned Civil Judge on 09.01.2023 and thereafter, plaintiff brought the present suit on 21.01.2023 seeking decree of declaration regarding validity of the collaboration agreement, contending that it was still subsisting and seeking cancellation of sale deeds executed by defendants No.1 and 2 in favour of defendant No.3. Declaration was also sought that supplementary agreement and the cancellation agreement were void. Besides, decree of permanent injunction was sought against the defendants from creating third party rights.

2.6 During pendency of the suit, this High Court disposed of CRM-M 4263 of 2022 having been rendered infructuous in the light of the cancellation report filed in FIR No.3 of 2022, vide order dated 19.07.2023.

2.7 Application under Order 39 Rules 1 & 2 CPC moved by the plaintiff was dismissed on 06.09.2023. Application under Order VII Rule 11 CPC moved by the defendants was also dismissed on 06.09.2023. Another application moved on 18.03.2023 by the plaintiff for amendment of the plaint was allowed on the same date of 06.09.2023 and the suit initially filed for declaration with consequential relief of permanent injunction was allowed to be converted into suit for specific performance of the collaboration agreement.

2.8 On 01.12.2023, defendant No.3 sold 1 *kanal* 11 *marlas* of the suit land in favour of defendant No.4 (*respondents N: 4 herein*). On 14.03.2024, the Judicial Magistrate Ist Class, Gurugram declined to accept the cancellation report filed in respect of FIR N: 3 of 2022.

2.9 On 17th September, 2024, this Court in FAO-COM-16 of 2023 directed the Commercial Court Gurugram to fix time schedule and decide the aforesaid civil suit No. 4 of 2023 within nine months from next date.

2.10 After the above order of this High Court, application was moved by the plaintiff under Order 1 Rule 10 CPC to implead defendant No.4 besides another application under Order VI Rule 17 CPC for amendment of the plaint.

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These applications were allowed on 09.12.2024. Amended plaint was filed by the plaintiff on 19.12.2024; and defendants No.1 to 4 filed separate written statements in December, 2024/ January 2025.

2.11 On 13.01.2025, plaintiff moved application under Order XI Rule 1(5) CPC for producing additional document, which was allowed on 01.03.2025 and an additional document was taken on record.

2.12 Yet another application under Order XI Rule 1(5) CPC was moved by the plaintiff on 18.01.2025 so as to produce following documents:-

- I. Balance sheets/ annual returns and relevant financial statements of the defendants (2016-2020)
- II. Copy of application dated 19.02.2024 and order dated 14.3.2024 passed thereon
- III. Full and final settlement documents executed by Mr. Ravi Khera upon leaving employment.
- IV. Copy of the complaint dated 28.03.2022 filed before the Department of Town and Country Planning Haryana along with copy of complaint dated 10.03.2023 filed before the Haryana Real Estate Regulatory Authority.

2.13 By way of the impugned order dated 05.03.2025, the aforesaid application under Order XI Rule 1 (5) CPC dated 18.01.2025 was dismissed by the Commercial Court, which has been assailed by the plaintiff-petitioner before this Court.

3.1 Assailing the impugned order, it is contended by learned Senior Advocate for the petitioner-plaintiff that production of the proposed additional documents is relevant and necessary for the proper adjudication of the case, as despite due diligence, the same could not be placed on file earlier. These are relevant for proper adjudication of the case especially in the light of the stand taken by the defendants in their written statements and that no prejudice will be caused to the defendants by allowing the application because they will get opportunity to controvert the same. Besides, under Order XI Rule 12 CPC, parties are duty bound to disclose all the documents, which come to their notice, till disposal of the suit.

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3.2 It is further the contention of learned Senior Advocate that application under Order XI Rule 1 (5) CPC was moved at the initial stage, as even the issues have not been settled so far and therefore, the Commercial Court should have granted the leave to file the additional documents, considering the same to be in the interest of justice and that plaintiff had established reasonable cause for non-disclosure thereof along with the plaint. It is further the contention of learned Senior Advocate that procedural rules are handmaid of justice, meant to adjudicate the rival claims of the parties and not to curtail them.

3.3 In support of his contention, learned Senior Advocate has referred to following authorities:-

- *Sudhir Kumar @ S. Baliyan Vs. Vinay Kumar GB 2021 (13) SCC 71*
- *Transport Corporation of India Limited Vs. Reserve Bank of India 2024 SCC Online Del 5533(Delhi High Court)*
- *Noveteur Electrical and Digital Systems Pvt. Ltd. Vs. V. Guard Industries Ltd. SCC Online Del 552 and*
- *Saffron Developers Pvt. Ltd. Vs. Premchand Resorts and Apartments & Ors. 2025 SCC Online Bom 476(Bombay High Court)*

4.1 Strongly refuting the aforesaid contentions, it is contended by learned Senior Advocate for respondent No.4 and ably supported by learned counsel for the other respondents that plaintiff-petitioner was well aware of the stand taken by the defendants since beginning, inasmuch as in the earlier suit filed before the Civil Court in 2022, defendants had disclosed their defence regarding the cancellation of the agreement in question. Not only this, plaintiff got amended the plaint in the present suit before the Commercial Court from time to time and that the last amended plaint was filed on 19.12.2024. Neither at the initial stage, when the plaintiff had the first opportunity to file the documents at the time of presentation of the plaint in 2023, nor at the later stage at the time of filing of amended plaints, the plaintiff produced the proposed documents which are now sought to be produced.

4.2 Learned Senior Advocate for the respondents has also referred to the conduct of the petitioner - plaintiff in order to emphasise that at every stage,

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plaintiff has tried to delay the proceedings despite the order dated 17.09.2024 passed by a Division bench of this Court in FAO-COM 16 of 2023, whereby the Commercial Court had been directed to fix time schedule and decide the suit within a period of 09 months. It is contended that in case the present revision petition is accepted and consequently, the application under Order XI Rule 1 (5) CPC is allowed, it will defeat the very objective of the provisions, as applicable to the Commercial disputes.

4.3 To support their contentions, learned counsels have referred to following authorities:-

- *Sudhir Kumar @ S. Baliyan Vs. Vinay Kumar GB, 2021 (13) SCC 71*
- *Nitin Gupta Vs. Texmaco Infrastructure and Holding Limited, 2019 SCC Online Del 8367*
- *Great Gatsby Club of India Vs. Mahesh Prefab Pvt. Ltd., 2022 SCC Online Del 2099*
- *Eicore Technologies Pvt. Ltd. & Ors. Vs. Eexpedise Technologies Pvt. Ltd., 2024 SCC Online Del 7536*
- *Bank of Baroda Vs. Gujarat Cables and Enamelled Products Pvt. Ltd., 2022 SCC Online Bom 4740*
- *Shri Rishi Raj Vs. Saregama India Ltd., 2021(285) DLT 689*
- *Entertainment Network (India) Ltd. Vs. HT Media Limited, 2022 SCC Online Del 2636*
- *Khanna Rayon Industries Pvt. Ltd. Vs. Swastik Associates & Ors., 2023 SCC Online Bom 1372*
- *M/s Lambha Exports Pvt. Ltd. & Anr. Vs. M/s Kristan Auto, CR No. 6805 of 2023, decided on 21.04.2025.*
- *Saregama India Ltd. Vs. Zee Entertainment Enterprises Ltd., 2023 SCC Online Del 2437.*

5. This Court has considered the submissions of both the sides and have appraised the record carefully.

6. Order XI of the Code of Civil Procedure deals with 'Discovery and Inspection'. However, in its application to the commercial disputes, this order XI



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has been substituted by way of Section 16 of Act of 2016. The substituted Order XI deals with '*Disclosure, Discovery and Inspection of documents in suits before the commercial division of a High Court or a Commercial Court*'. The objective of the newly substituted provision pertaining to commercial disputes is to promote transparency, efficiency and early disclosure of relevant documents in litigation process. It seeks to ensure that the parties disclose all the documents that are relevant to the matter including both favourable and unfavourable documents at the initial stage of the proceedings itself. Order XI Rule 1 contains 12 sub rules. Sub rules (1) to (6) are applicable to the plaintiff; whereas sub-rules (7) to (11) are applicable to the defendant/ counter claimant. Sub-rule (12) is applicable to both the parties.

7. The comparative table of the aforesaid Order XI Rule 1, in relation to the plaintiff and defendant, is as under:-

Order XI Rule 1 CPC (as applicable to Commercial Disputes) - Disclosure and discovery of documents			
Sub Rule		Sub Rule	
(1)	Plaintiff 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 plaint, including:— (a) documents referred to and relied on by the plaintiff in the plaint; (b) documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, <u>as on the date of filing the plaint</u> , irrespective of whether the same is in support of or adverse to the plaintiff's case; (c) nothing in this Rule shall apply to documents produced by plaintiffs and relevant only — (i) for the cross-	(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 <u>or with its counterclaim if any</u> , 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—



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	<p>examination of the defendant's witnesses, or</p> <p>(ii) in answer to any case set up by the defendant subsequent to the filing of the plaint, or</p> <p>(iii) handed over to a witness merely to refresh his memory.</p>		<p>(i) for the cross-examination of the plaintiff's witnesses,</p> <p>(ii) in answer to any case set up by the plaintiff subsequent to the filing of the plaint, or</p> <p>(iii) handed over to a witness merely to refresh his memory.</p>
(2)	<p>The list of documents filed with the plaint shall specify whether the documents in the power, possession, control or custody of the plaintiff are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document, mode of execution, issuance or receipt and line of custody of each document.</p>	(8)	<p>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.</p>
(3)	<p>The plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody.</p> <p>Explanation.—A declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix.</p>	(9)	<p>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, <u>save and except for those set out in sub-rule (7) (c) (iii)</u> 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.</p>
(4)	<p>In case of urgent filings, the plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath and <u>subject to grant of such leave</u></p>		



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	<p><u>by Court</u>, the plaintiff shall file such additional documents in Court, <u>within thirty days of filing the suit</u>, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession, control or custody.</p>		
(5)	<p>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, <u>save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure</u> along with the plaint.</p>	(10)	<p><u>Save and except for sub-rule (7) (c) (iii)</u>, 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, <u>save and except by leave of Court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure</u> along with the written statement or counterclaim.</p>
(6)	<p>The plaint shall set out details of documents, which the plaintiff believes to be in the power, possession, control or custody of the defendant and which the plaintiff wishes to rely upon and seek leave for production thereof by the said defendant.</p>	(11)	<p>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.</p>
(12)	<p>Duty to disclose documents, which have come to the notice of a party, shall continue till disposal of the suit.</p>		

8. When the aforesaid provisions are examined in their entirety, it becomes evident that their primary objective is to ensure that parties disclose all relevant documents—favourable or unfavourable—at the outset of the proceed-

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ings. This early disclosure is intended to prevent "trial by ambush," minimize surprises during trial, and facilitate effective case management through the narrowing of issues in dispute. The provisions impose strict obligations on both parties to act in good faith and disclose all documents within their power, possession, control, or custody that are pertinent to the matter.

9. Specifically, the plaintiff is required, at the very inception of the suit, to submit a comprehensive list of such documents along with the plaint, accompanied by an affidavit of disclosure in the prescribed format. This ensures full and frank disclosure even before the Court begins hearing the matter or the defendant enters appearance. While the defendant is subject to the same duty of disclosure, it arises at a later stage—namely, when filing the written statement. This procedural difference lies solely in timing - the plaintiff's disclosure obligation arises at the commencement of the suit, whereas the defendant's obligation coincides with their written response.

10. Although parties may seek to rely on additional documents at a later stage, sub-rule (5) for plaintiffs and sub-rule (10) for defendants require them to obtain the Court's leave. Such leave will be granted only upon showing a reasonable cause for the earlier non-disclosure.

11. Furthermore, under sub-rule (12) of Order XI Rule 1, both parties are under a continuing duty to disclose any relevant documents that come into their possession or control during the pendency of the proceedings.

12. Failure to comply with the disclosure obligations may lead to serious consequences, including being barred from relying on undisclosed documents without the Court's permission, imposition of costs, and the drawing of adverse inferences.

13. While interpreting sub-rule (4) and (5) of Order XI Rule 1 CPC, Hon'ble Supreme Court in ***Sudhir Kumar Vs. Vinay Kumar's case (supra)***, on which incidentally counsel for both the parties have relied, held as under:-

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“9.4 However, the additional documents can be permitted to be bought on record with the leave of the court as provided in Order XI Rule 1 (4). Order XI Rule 1 (4) provides that in case of urgent filings, the plaintiff may seek leave to rely on additional documents as part of the above declaration on oath [as provided under Order 11 Rule 1 (3)] and subject to grant of such leave by Court, the plaintiff shall file such additional documents in Court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession, control or custody.

9.5 Order XI Rule 1 (5) further provides that 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. Therefore on combined reading of Order XI Rule 1 (4) read with Order XI Rule 1 (5), it emerges that (i) in case of urgent filings the plaintiff may seek leave to rely on additional documents; (ii) within thirty days of filing of the suit; (iii) making out a reasonable cause for non-disclosure along with plaint.

9.6 Therefore a further thirty days’ time is provided to the plaintiff to place on record or file such additional documents in court and a declaration on oath is required to be filed by the plaintiff as was required as per Order XI Rule 1 (3) if for any reasonable cause for non-disclosure along with the plaint, the documents, which were in the plaintiff’s power, possession, control or custody and not disclosed along with plaint. *Therefore plaintiff has to satisfy and establish a reasonable cause for non-disclosure along with plaint. However, at the same time, the requirement of establishing the reasonable cause for non-disclosure of the documents along with the plaint shall not be applicable if it is averred and it is the case of the plaintiff that those documents have been found subsequently and in fact were not in the plaintiff’s power, possession, control or custody at the time when the plaint was filed.* Therefore Order XI Rule 1 (4) and Order XI Rule 1 (5) applicable to the commercial suit shall be applicable only with respect to the documents which were in plaintiff’s power, possession, control or custody and

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not disclosed along with plaint. Therefore, the rigour of establishing the reasonable cause in non-disclosure along with plaint may not arise in the case where the additional documents sought to be produced/relied upon are discovered subsequent to the filing of the plaint.”

14.1 In ***Transport Corporation of India Vs. Reserve Bank of India & Anr. (supra)***, Delhi High Court referred to ***Sudhir Kumar’s case (supra)*** and then held as under:-

“43. Perusal of the aforesaid excerpts of the judgment reveals that Order XI Rule 1(5) of the CPC, as amended by the Act, 2015 specifies that plaintiffs cannot rely on documents that were in their possession, power, control, or custody at the time of filing the plaint but were not disclosed, except with the Court's leave. This leave is granted only if the plaintiff can establish a reasonable cause for the non-disclosure.

44. A combined reading of Order XI Rule 1(4) and Order XI Rule 1(5) of the CPC, as amended by the Act, 2015 indicates that a plaintiff can seek leave to rely on additional documents, if they file for it within thirty days of the suit's filing and provide a reasonable cause for not disclosing these documents initially.

45. It is further observed by this Court that an additional thirty days are granted to the plaintiff to file or place such documents on record, along with a declaration on oath explaining the reasonable cause for the initial non-disclosure. However, if the plaintiff claims that the documents were discovered after the plaint was filed and were not in their possession, power, control, or custody at the time of filing, the requirement to establish a reasonable cause for non-disclosure does not apply. Therefore, the provisions of Order XI Rule 1(4) and Rule 1(5) of the CPC in commercial suits are relevant only for documents initially within the plaintiff's power but not disclosed. The requirement to establish a reasonable cause is not applicable for documents discovered post-filing of the plaint.”

14.2 In the above case before Delhi High Court, certain documents were obtained by the petitioner through RTI, which were sought to be produced as additional documents. The case was at the initial stage, as evidence was yet to be led. In these circumstances, Delhi High Court took the view that no prejudice shall be caused to the opposite party, as the evidence was yet to be conducted/

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adduced by the parties and that respondent/ defendant would have sufficient opportunities to object to the said documents.

15. In ***Novateur Electrical & Digital Systems Pvt. Ltd. Vs. V-Guard Industries Ltd. (supra)***, the additional documents sought to be placed on record by the defendant were discovered by the defendant subsequently and therefore Delhi High Court held that there is no impediment in taking the said documents on record.

16. In ***Saffron Developers Pvt. Ltd. Vs. Premchand Resorts & Apartments & Ors. case (supra)***, some documents were disclosed in the plaint as well as in the affidavit in lieu of the examination-in-chief of the plaintiff, but through sheer inadvertence, they were not annexed or exhibited. While allowing the production of the documents, Bombay High Court reasoned that it was not a case when documents had not been disclosed at all.

17. Coming to authorities cited by Ld. Counsel for respondents, in ***Nitin Gupta Vs. Texmaco Infrastructure and Holding Limited (supra)***, Delhi High Court has observed as under:-

“37. Unless, the Commercial Divisions, while dealing with the commercial suits, so start enforcing Rules legislated for commercial suits, and refuse to entertain applications for late filing of documents, especially with respect to documents of suspicious character and continue to show leniency in the name of ‘interest of justice’ and ‘a litigant ought not to suffer for default of advocate’, the commercial suits will start suffering from the same malady with which the ordinary suits have come to suffer and owing whereto the need for the Commercial Courts Act, 2015 was felt. Commercial Division is thus not required to entertain or allow applications for late filing of documents, without any good cause being established for non-disclosure thereof along with pleadings. The plaintiff herein has utterly failed in this regard. The application nowhere explains as to why the plaintiff, if had obtained the said letter from the defendant, did not remember the same and make disclosure of the same at the time of filing the police complaint and/or at the time of filing of this suit, even if the letter had been misplaced or was not immediately available. The form prescribed for filing affidavit of documents requires a litigant in a commercial suit to, even if not immediately

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possessed of a relevant document, disclose the same. A litigant who fails to do so and also does not satisfy the Court while seeking to belatedly file the document, why no disclosure of such document was made, cannot be permitted to so file documents.

38. Order XIII Rules (1) & (2) of the CPC as it existed prior to amendment with effect from 1st July, 2002, required the documents to be filed at or before the settlement of issues and no documents could be received at any subsequent stage unless "good cause was shown to the satisfaction of the Court for non-production thereof". Post amendment with effect from 1st July, 2002 of CPC, vide Order VII Rule 14(1)&(3) and Order VIII Rule 1A(1)&(3) a plaintiff was required to file documents along with plaint and a defendant required to file documents along with written statement and documents were not permitted to be received thereafter without leave of the Court. Prior to 2002, the parties, if had not filed the document prior to settlement of issues, were required to satisfy the Court as to why the document was not filed till the stage of settlement of issues and were not required by language of Order XIII Rule (2) to satisfy whether the document was within their knowledge or not. I emphasise, only reason for 'non-production' was to be stated and not the reason for 'non-disclosure'. Though with effect from 1st July, 2002, for late filing of documents only leave of the Court was required to be taken but the test continued to be applied by the Courts for granting such leave continued to be as prior to 2002 i.e. of reasons for 'non-production' of documents at the stage provided therefor. Order XI Rule (1) of the CPC as applicable to commercial suits brought about a radical change. The late filing of documents thereunder is permitted applying the test of reasonable cause of 'non-disclosure' of the document at the stage provided for filing thereof. An applicant now is required to satisfy the Court as to why the document was not in his knowledge and if in his knowledge why was the document not disclosed at the appropriate time. Thereunder, documents, even if not immediately available, are required to be disclosed."

18. In ***Great Gatsby Club of India Vs. Mahesh Prefab Pvt. Ltd. case (supra)***, contention was raised before the Delhi High Court that bringing the additional documents on record would not cause any prejudice to the opposite party. Repelling the said contention, it was held by Delhi High Court:-



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“20. Unfortunately, these considerations cannot be of any relevance where the suit has been filed as a commercial suit, under the Commercial Courts Act. The proscription against bringing additional documents on record, save and except where sufficient cause were not filing of the documents along with the plaint or with the written statement, in the case of the plaintiff and the defendant, as contained in clauses (5) and (10) of Order XI Rule 1 of the CPC as amended by the Commercial Courts Act, are absolute.

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.”

19. In ***Eicore Technologies Pvt. Ltd. Vs. Eexpedise Technologies Pvt. Ltd. & Ors., (supra)***, contention was raised that the proposed additional documents were not filed earlier due to oversight and error of the previous counsel. Repelling the contention, it was held by Delhi High Court as under:-

“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*, held as follows:

"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)

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."

20. Taking similar view in ***Bank of Baroda Vs. Gujrat Cables and Enamelled Products Pvt. Ltd. (supra)***, Bombay High Court held that plea of sheer inadvertence or oversight would not furnish or constitute reasonable cause for granting leave under Order XI Rule 1 CPC as applicable to the commercial suits. Same view has been taken later on by Delhi High Court in ***Rishi Raj Vs. Saregama India Limited, (supra)***.

21. In ***Saregama India Ltd. Vs. Zee Entertainment Enterprises Ltd. (supra)***, additional documents were sought to be filed to counter the case set up by the defendants in their written statement and that the same could not be filed along with the plaint. It was also the contention that the proposed documents were relevant and necessary for adjudication of the case and that recording of the evidence was yet to begin in the case and therefore, no prejudice would be caused to the defendant, if the documents are taken on record. Delhi High Court

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after referring to the relevant provisions of Order XI Rule 1 CPC, and repelling the aforesaid contentions held as under:-

“27. A perusal of the aforesaid provisions would show that in all commercial suits, the plaintiff is obliged to file a list of documents and photocopies of documents in its power, possession, control or custody pertaining to the suit along with the plaint. These documents would include documents referred and relied in the plaint as well as documents relating to any matter in question in the proceedings, even if the same is adverse to the plaintiff's case.

28. Sub-Rule (1) (c) provides certain exceptions to the aforesaid Rule. In terms of Sub-Rule (1) (c) (ii) of Order XI Rule 1, an exception is provided in respect of the documents, which are in answer to any case set up by the defendant subsequent to the filing of the plaint.

29. Sub-Rule (5) mandates that the plaintiff shall not be allowed to rely on documents which were in the plaintiff's power, possession, control or custody and not disclosed in the plaint and nor filed within the extended period as provided in sub-Rule (4) except with the leave of the Court and upon showing reasonable cause for the same.

XXXX

38. The plaintiff has invoked sub-Rule (1) (c) (ii) of Order XI Rule 1 read with sub-Rule (5) of [Order XI Rule 1 of the CPC](#) to file additional documents. As is evident from the passages set out above, it has specifically been pleaded by the plaintiff that the aforesaid documents are being filed to counter the case set up by the defendant and hence, could not be filed at the time of filing of the suit. However, no explanation has been given by the plaintiff as to why the aforesaid documents were not filed along with the replication. Further, the plaintiff has failed to provide any reasonable cause for filing the aforesaid documents at this stage, 5 years after the replication was filed.”

22. Thus, the legal position is that though under the **pre-2002 regime** (Order XIII Rule 2 CPC), late filing was allowed if "good cause" for **non-production** was shown, but **post-2002 amendments**, Order VII Rule 14 and Order VIII Rule 1A required documents are to be filed with the pleadings, with Court leave needed thereafter. However, under the **commercial suits regime**, a **higher threshold** is

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applied - the party must now explain not just why a document wasn't produced, but why it wasn't even disclosed earlier, if it was known or existed.

23. The statutory scheme under **Order XI Rule 1 CPC**, as amended, imposes strict obligations of disclosure on parties to a commercial suit, thereby intending to curb the culture of trial by ambush and to promote procedural discipline, case management, and expedition in adjudication.

24. The following principles emerge from a series of decisions of the Delhi and Bombay High Courts, as have been cited above:

(i) **Mandatory Early Disclosure:** The plaintiff is required to file, at the very inception of the suit, all documents in its power, possession, control, or custody, regardless of whether such documents support or undermine its case. A similar duty is cast upon the defendant at the stage of filing the written statement.

(ii) **Narrow Exceptions:** The only exception under Order XI Rule 1(1)(c)(ii) relates to documents, which are in answer to a case subsequently set up by the defendant. Even such documents must be disclosed at the earliest and with due explanation.

(iii) **Standard of "Reasonable Cause":** Sub-rule (5) permits the Court to grant leave to rely upon undisclosed documents only upon being satisfied that there existed a "reasonable cause" for such non-disclosure. As held in *Eicore Technologies and Bela Creation Pvt. Ltd. v. Anuj Textiles*, "reasonable cause" must be interpreted to mean circumstances beyond the party's control. Pleas of oversight, inadvertence, or error by counsel do not constitute reasonable cause.

(iv) **No Leeway for Strategic or Delayed Filings:** The courts have consistently rejected attempts to file documents at later stages—such as after filing of replication or commencement of trial—where such documents existed earlier and were within the party's knowledge or possession. Filing

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such documents merely to plug gaps in the case or respond tactically to the defendant's stand is impermissible under the Commercial Courts Act.

(v) **Strict Construction of Procedural Timelines:**The intent of the legislature, as reflected in the scheme of the Commercial Courts Act, is to enforce procedural rigor. Courts must therefore resist granting leave casually or invoking equitable maxims like "interest of justice" or "fault of counsel" to override statutory requirements.

25. In the light of the abovesaid legal position, stage is set to look into the impugned order, whether it is legally sustainable in the facts and circumstances of the present case.

26. The Commercial Court while rejecting the application of the petitioner-plaintiff under Order 11 Rule 1(5) CPC has observed as under:-

"13. Firstly, the applicant/plaintiff wants to tender balance sheets/annual returns and relevant financial statements of the defendants for the year 2016 to 2020. Learned counsel for the applicant has argued that the defendants in their written statement have claimed forfeiture of the security interest paid by the plaintiff and have relied upon alleged supplementary agreement dated 24.11.2016 and alleged cancellation agreement dated 18.12.2017. However, it is seen that the documents sought to be tendered are stated to be in response to written statement filed by defendants no.1 and 2 subsequent to filing of the plaint. The written statement in this case was originally filed on 29.10.2022 before the Court of Shri Anil Kumar Yadav, the then learned Civil Judge (Jr. Divn.), Gurugram in case bearing CIS no. CS-2770-2022. The said court returned the plaint under Order 7 Rule 10 CPC on 09.01.2023 with a direction to both the parties to appear before this court on 21.01.2023. In pursuance to direction issued by the learned Civil Judge (Jr. Divn.), Gurugram, the plaint was presented before this court on 21.01.2023 and in pursuance to directions issued, learned counsel for defendant no.3 appeared before this court on the same date and filed its written statement before this court on the same date and court notice was issued to defendants no.1 and 2. However, since all the original pleadings were returned by the learned Civil Judge (Jr. Divn.),

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Gurugram, the plaintiff at the time of presenting the plaint before this court also placed before this court, the original written statement filed on behalf of defendants no.1 & 2 and other written statement filed by defendant no.3 along with the plaint on 21.01.2023. Since the pleadings were not in consonance with the requirements of amended CPC applicable to commercial disputes, the court directed the parties to verify their respective pleadings by filing statement of truth in support of their respective pleadings i.e. written statements as statement of truth in support of plaint was filed on the same date. Thus, all these facts were in the notice of applicant/plaintiff from 29.10.2022 onwards but no such application was then moved by the applicant/plaintiff and instead the applicant/plaintiff has moved the present application now which cannot be allowed. Otherwise also onus to prove their defence is on defendants no.1 & 2 and to rebut their case, applicant/plaintiff may put these documents in the cross-examination of defendant's witness which is permitted under Order XI Rule (1)(c)(i) CPC.

14. The other document sought to be tendered by the applicant/plaintiff by way of this application is copy of application dated 19.02.2024 and order dated 14.03.2024 relating to a criminal complaint. The application was moved by applicant/plaintiff on 19.02.2024 before the concerned court on which an order was passed on 14.03.2024 vide which it is claimed that the application moved by the applicant/plaintiff was allowed and cancellation report was not accepted and further investigation was ordered. First of all, the criminal proceedings are separate than the present proceedings. So it is not relevant for proper adjudication of the present case. Otherwise also, the application was moved on behalf of applicant/plaintiff itself and order was also passed on 14.03.2024 but despite that the present application seeking permission for placing on record these documents has been moved on 18.01.2025 knowing that the Hon'ble High Court has asked this court to decide this suit in a time bound manner vide order dated 17.09.2024 passed by Hon'ble High Court in FAO-COM-16-2023 (O&M), titled as 'M3M India Private Limited Versus MGF Developments Limited and others'. So the delay in moving the application and relevance of the document for proper adjudication of the suit are not justified. So these documents also cannot be taken on record.

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15. The applicant/plaintiff also wants to tender full and final settlement documents executed by Mr. Ravi Khera at the time of leaving the job. However, this fact was already in knowledge of plaintiff in the year 2022 but till date no action was taken by plaintiff to tender these documents and this delay has remained unexplained.

16. Lastly, the applicant/plaintiff also wants to tender copy of complaint dated 28.03.2022 made by applicant/plaintiff to Director Town and Country Planning and representation/complaint dated 10.03.2023 filed by applicant/plaintiff before HRERA. Even these documents are of the applicant/plaintiff itself and were in its knowledge and possession earlier but for the reasons best known to it the same were not filed earlier and now after a delay of almost two years, these documents cannot be allowed to be taken on record as no reasonable cause or relevance of these documents has been shown by the applicant/plaintiff.

17. As per statutory provisions applicable to commercial disputes, all the documents sought to be relied upon have to be placed on file along with the pleadings or at the first instance when the applicant came to know about these documents and considered it necessary to place reliance on these documents. In the present case, the applicant/plaintiff kept silent for almost 2-3 years for placing the documents on case file and the documents relating to criminal proceedings are not even relevant for proper adjudication of the present case. Most of these documents are of applicant/plaintiff itself, which were in its knowledge, custody and possession but still they were not tendered on the case file. So no ground for allowing the application for permitting the applicant/plaintiff now to tender these additional documents on the case file is made out."

27. It is, thus, clear that at the time of filing of initial suit before Ld. Civil Judge in 2022, the grievance of the plaintiff was that amount of ₹ 88 crores was refundable but had been wrongly made non-refundable. The defendants had filed the written statement and thus, the nature of dispute was such that in case plaintiff considered the balance-sheets of the defendants as relevant documents, it was obligated to present the same along with the plaint. Plaintiff when filed the

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suit before the Commercial Court, it annexed therewith the written statement, which had been filed by the defendants in the earlier suit. In case plaintiff considered the balance sheets for the year 2016 to 2020 of the defendants to be relevant, it could have been disclosed and produced the same along with the plaint. Not only this, plaintiff was allowed to amend the plaint twice, initially on 06.09.2023 and then on 09.12.2024 but still along with the amended plaint, the plaintiff-petitioner failed to annex the proposed balance sheets. The Commercial Court has also rightly observed that since balance sheets pertain to the defendants, the plaintiff may put them in cross-examination of defendants' witnesses under Order XI Rule 1(c)(1) of CPC.

28. Similarly, the application dated 19.02.2024 and order dated 14.03.2024 pertaining to the criminal complaint, which the plaintiff proposes to produce in additional documents, were very much in its knowledge, when the amended plaints were filed but still plaintiff failed to do so.

29. So far as other documents i.e. full and final settlement document pertaining to Ravi Khera at the time of leaving the job; and the complaint dated 28.03.2022 made by the plaintiff to the Director, Town and Country Planning and representation/ complaint dated 10.03.2023 are concerned, these were very much in the power, possession and custody of the plaintiff and therefore, plaintiff cannot be allowed to contend that these documents were not produced due to sheer inadvertence or mistake.

30. As far as sub-rule (12) of Order XI Rule 1 CPC, as relied by Ld. Counsel for the petitioner to justify the production of additional documents is concerned, said provision is applicable to the documents, which have come into existence later on. However, none of the documents which are proposed to be produced by the plaintiff are such, which came into existence after filing of the plaint/ amended plaint by the plaintiff. As such, plaintiff-petitioner cannot be allowed to take advantage of sub-rule (12).

31. It is thus clear that the documents sought to be introduced by the plaintiff were within its possession and knowledge at the time of institution of the suit. No credible explanation constituting "reasonable cause" has been offered for

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the failure to disclose such documents at the appropriate stage. The plea of inadvertence is neither tenable nor sufficient to warrant the exercise of discretion in favour of the plaintiff.

32. Having regard to the scheme & objective of Order XI Rule 1 CPC applicable to the Commercial Courts and the legal position, this Court comes to the conclusion that no illegality, error or perversity has been committed by the Commercial Court in declining the application of the plaintiff to place on record the proposed additional documents under Order XI Rule 1(5) CPC. Consequently, holding the present revision petition to be devoid of any merits, the same is hereby dismissed.

26.05.2025*Jiten***(DEEPAK GUPTA)****JUDGE**

Whether speaking/ reasoned: Yes/ No

Whether reportable: Yes/No