



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

% ***Judgment Reserved on: 6th February, 2025***
Judgment pronounced on: 28th February, 2025

I.A. 44281/2024

IN

+ CS(COMM) 1674/2016

ZEE ENTERTAINMENT ENTERPRISES LTDPlaintiff

Through: Mr. Harsh Kaushik, Ms. Petal
Chandhok, Mr. Harsh Prakash,
Ms. Yashita Rastogi, Ms. Sucheta Roy
and Ms. Kashish Rehan, Advocates

versus

SAREGAMA INDIA LTDDefendant

Through: Mr. Gopal Jain, Senior Advocate with
Mr. Ankur Sangal, Mr. Shashwat
Rakshit and Ms. Amrit Sharma,
Advocates

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

I.A. 44281/2024 (seeking leave to place on record additional documents)

1. The present application has been preferred on behalf of the plaintiff under Order XI Rule 1(5) of the Code of Civil Procedure, 1908 as amended by the Commercial Courts Act, 2015 (hereinafter 'CPC') seeking leave of this Court to place on record additional documents as well as an additional affidavit of evidence of the plaintiff's witness Ms. Sucheta Deb Burman in the present suit.

2. The plaintiff has instituted the present suit seeking permanent



injunction restraining the defendant from infringing the plaintiff's copyright in the sound recordings incorporated in 29 cinematograph films listed in the plaint along with other ancillary reliefs.

3. Notice in the present application was issued and accepted by counsel for the defendant in Court on 7th November, 2024. Reply on behalf of the defendant and rejoinder thereto on behalf of the plaintiff have been filed.

FACTUAL BACKGROUND

4. The plaintiff, in the present application, has stated that the need for filing the additional documents in the suit arose on account of the following events:

4.1. The plaintiff, in order to prove its ownership in the 29 cinematograph films which are subject matter of the present suit, has filed documents which include assignment agreements executed by and between the plaintiff/ its predecessor-in-interest and the producers/ production houses/ their successors-in-interest.

4.2. The plaintiff, however, does not possess the originals of certain documents, which were filed on 18th April, 2017, as the same are extremely old documents written and addressed amongst third-parties and such originals ought to be in the power, possession and/ or custody of such third-parties. Therefore, the plaintiff could only file copies of such documents.

4.3. During the hearing dated 18th March, 2019, when the statement of the plaintiff's witness Mr. Anurag Bedi was partially recorded, the aforementioned documents were de-exhibited for want of originals and were marked as Mark A, Mark B, Mark C and Mark D.



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4.4. The plaintiff's substituted witness Ms. Sucheta Deb Burman, in her evidence affidavit dated 24th May, 2023, deposed in respect of the manner in which the plaintiff had acquired the copies of the aforesaid documents. However, further due diligence was required to determine whether the originals of the said documents could be located. Therefore, she did not depose as to whether the originals have been lost or destroyed or whether the plaintiff would be able to procure the originals of the said documents.

4.5. Despite due diligence and best efforts, the plaintiff could not procure the current contact details of the third-parties, who it verily believed possess the originals of the aforesaid documents. Therefore, it issued letters to such third-parties on their respective addresses mentioned in the aforesaid documents marked as Mark A, Mark B, Mark C and Mark D requesting them to provide the originals of the aforesaid documents.

4.6. In order to tender in evidence the documents which already form part of the record and the documents sought to be placed on record by way of the present application, the plaintiff has also filed an additional affidavit of evidence of its witness Ms. Sucheta Deb Burman.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF

5. Mr. Harsh Kaushik, counsel appearing on behalf of the plaintiff/applicant, has made the following submissions:

5.1. The additional documents are sought to be placed on record in accordance with Sections 65 and 66 of the Indian Evidence Act, 1872 for leading secondary evidence in respect of documents which already form part of the record of the present suit. Therefore, these documents are relevant for the adjudication of the present suit.



5.2. As the aforesaid additional documents are letters sent by the plaintiff only recently, there was no occasion for it to disclose the same along with the plaint. Therefore, the plaintiff has established reasonable cause for not disclosing the said letters along with the plaint.

5.3. As the examination-in-chief of the plaintiff's witness is yet to conclude and her cross-examination is yet to start, the defendant would have full opportunity to cross-examine the plaintiff's witness in respect of the contents of the additional affidavit of evidence.

5.4. No prejudice would be caused to the defendant if the aforesaid additional documents are taken on record as the said documents would not prejudice the merits of the case put forth by the defendant. However, grave prejudice would be caused to the plaintiff if the present application is not allowed as the plaintiff would not be able to prove the documents which are material to the present dispute and are already on record.

SUBMISSIONS ON BEHALF OF THE DEFENDANT

6. Mr. Gopal Jain, senior counsel appearing on behalf of the defendant/respondent, has made the following submissions:

6.1. The plaintiff, in the present application, has made statements in contradiction with its statements made in the index of documents dated 18th April, 2017 regarding the power, possession and custody of the documents filed with the aforesaid index of documents. The plaintiff has earlier stated that it has the possession and custody of the aforesaid documents, however, after it was unable to produce the originals thereof, it changed its stand. It is therefore evident that the plaintiff *mala fide*ly intended to introduce new evidence after trial has commenced in the suit.



6.2. The necessity to send the letters sought to be placed on record arose as far back on 18th March, 2019 when certain documents filed with the index of documents dated 18th April, 2017 were de-exhibited. However, the plaintiff sent the aforesaid letters only between 15th November, 2023 and 13th February, 2024, *i.e.*, more than four years thereafter. Therefore, the plaintiff is delaying the proceedings in the suit.

6.3. Even if any due diligence was required to be done to locate the originals of certain documents, the same should have been done at the time of or before filing the evidence affidavit of Ms. Sucheta Deb Burman and not afterwards.

6.4. The documents sought to be placed on record came into existence between 15th November, 2023 and 13th February, 2024 and the suit was listed for recording the plaintiff's witness on multiple occasions thereafter, but the present application was filed only in November 2024. Therefore, the plaintiff has failed to discharge its duty to file the present application in a timely manner.

6.5. The plaintiff has failed to show any reasonable cause for the belated filing of the aforesaid additional documents under the provisions of Order XI Rule 1(5) of the CPC.

6.6. The additional affidavit of evidence sought to be filed goes beyond the additional documents sought to be placed on record. Therefore, the plaintiff is seeking to tender further evidence which were missed out by it at the time of filing of the initial affidavit of evidence. The plaintiff has filed the evidence affidavit of its witness on three occasions already and it should not be allowed any further opportunity to improve its case.



6.7. The plaintiff's reliance on Sections 65 and 66 of the Indian Evidence Act, 1872 is misplaced as the plaintiff has not made out any case for leading secondary evidence.

REJOINDER SUBMISSIONS ON BEHALF OF THE PLAINTIFF

7. Mr. Harsh Kaushik, counsel appearing on behalf of the plaintiff/applicant, has made the following submissions in rejoinder:

7.1. The plaintiff, in its index of documents dated 18th April, 2017, categorically mentioned that it is in possession of the copies of the aforesaid de-exhibited documents and not their originals. Therefore, the plaintiff has not made any contradictory statement in respect of the possession of such documents.

7.2. On account of the ensuing COVID-19 pandemic, the plaintiff could not take the necessary steps for procuring the originals of the aforesaid documents. Thereafter, the plaintiff was verifying the current addresses of the aforesaid third-parties, however, despite its due diligence and best efforts, could not get the same verified. Therefore, there has been no delay in issuing the aforesaid letters to the respective third-parties.

7.3. The requirement to establish a reasonable cause under the provisions of Order XI Rule 1(5) of the CPC is not applicable in the present case as the additional documents sought to be placed on record were not in the power and possession of the plaintiff at the time when the plaint was filed and the same came into existence subsequent to the filing of the suit.

7.4. The rejection of the additional affidavit of evidence and the present application would be a violation of the plaintiff's right to fair and just proceeding.



PROCEDURAL TIMELINES IN THE SUIT

8. The timelines in the suit relevant for consideration of the present application are given below:

8.1. Summons in the suit were issued and accepted by counsel for the defendant in Court on 23rd December, 2016.

8.2. Pleadings in the suit were completed and issues were framed on 9th October, 2017. The inspection of the original documents was done on 14th November, 2017.

8.3. Evidence affidavit of the plaintiff's witness Mr. Anurag Bedi was taken on record on 21st January, 2019. Examination of the plaintiff's witness Mr. Anurag Bedi commenced on 18th March, 2019 when certain documents filed by the plaintiff were de-exhibited for want of originals.

8.4. An application seeking leave to file certain additional documents was filed on behalf of the plaintiff and the same was dismissed on 11th September, 2019 on the ground that the plaintiff failed to establish any cause, lest reasonable cause, for filing the said additional documents at that stage.

8.5. *Vide* order dated 25th February, 2022, the plaintiff's witness Mr. Anurag Bedi was substituted with Ms. Sucheta Deb Burman. Thereafter, evidence affidavit of Ms. Sucheta Deb Burman was filed on 13th April, 2022 and a fresh/ modified evidence affidavit was filed on 24th May, 2023. Examination-in-chief of Ms. Sucheta Deb Burman commenced on 10th October 2023, when the plaintiff requested and was granted two weeks' time to file additional evidence affidavit of its witness *qua* the documents already placed on record. However, the same was not filed within the period allowed.



8.6. The examination-in-chief of the plaintiff's witness is yet to conclude and her cross-examination is yet to start.

8.7. The plaintiff filed an application seeking to place on record additional documents on 29th August, 2024, however, the same was withdrawn on 28th October, 2024 with the liberty to file afresh.

8.8. The plaintiff thereafter filed the present application on 29th October, 2024.

ANALYSIS AND FINDINGS

9. I have heard counsel for the parties and have examined the material on record.

10. As is evident from the timelines of the suit recorded above, the present suit was filed as far back in the year 2016 and issues were framed on 9th October, 2017. Still the evidence in the suit is yet to be recorded.

11. By way of the present application, the plaintiff seeks to place on record additional documents which are letters issued by the plaintiff, along with their speed post receipt and tracking report. The details of the aforesaid letters sought to be placed on record are as follows:

- a. Letter dated 15th November, 2023 addressed to M/s Prasad Film Laboratories Private Limited;
- b. Letter dated 13th February, 2024 addressed to M/s K. P. K. Movies;
- c. Letter dated 13th February, 2024 addressed to M/s Lakshmi Video Studio Private Limited;
- d. Letter dated 13th February, 2024 addressed to M/s Bombay Film Laboratories Private Limited.

12. The aforesaid documents are sought to be placed on record by the



plaintiff in order to lead secondary evidence in respect of the following documents, of which photocopies have been filed by the plaintiff:

- a. Letter dated 14th September, 1994 issued by Essel Vision to M/s Lakshmi Video Studio Private Limited;
- b. Letter dated 14th September, 1994 issued by M/s Lakshmi Video Studio Private Limited to M/s Prasad Film Laboratories Private Limited;
- c. Letter dated 10th December, 1986 issued by K. P. K. Movies to M/s Bombay Film Laboratories Private Limited;
- d. Power of Attorney dated 2nd February, 1989 executed by K. P. K. Movies empowering Sh. Kewal Hakumat Rai Suri, Managing Director of M/s Televideo Electronics Private Limited.

13. The aforementioned documents, in respect of which the plaintiff seeks to lead secondary evidence, were exhibited in the affidavit of Mr. Anurag Bedi (PW1) filed on behalf of the plaintiff on 8th December, 2018. However, they were de-exhibited as far back on 18th March, 2019 as the plaintiff had failed to produce the originals. The documents now sought to be placed on record by the plaintiff include letters which were issued by the plaintiff only between 15th November, 2023 and 13th February, 2024, *i.e.*, more than four years after the need to issue such letters arose.

14. The plaintiff is a company of repute and has been in the business for several decades. The present suit has been filed by the plaintiff for enforcement of its copyrighted works, which include sound recordings incorporated in cinematograph films as well as audio-visual of such sound recordings. The plaintiff claims to have acquired copyright in respect of the aforesaid works from their respective producers/ right holders. As per the case



set up in the plaint, the aforesaid rights were assigned to the plaintiff through various deeds of assignment entered into between the producers/ right holders and the plaintiff/ its predecessors-in-interest.

15. Clearly, if the plaintiff is asserting its rights in the suit on the basis of the documents referred to in paragraph no.12 hereinabove, it ought to have had in its possession the originals of these documents at the time of the filing of the suit. In the event the plaintiff did not have the originals of these documents, it should have taken steps towards leading secondary evidence to prove these documents right at the beginning when these documents were filed or, at the very least, when the same were de-exhibited for want of originals on 18th March, 2019.

16. It is an admitted position that the plaintiff was aware that it did not possess the originals of the aforesaid documents. This is evident from the index of documents dated 18th March, 2017 where it is stated that the plaintiff has ‘copies’ of these documents. Yet, no steps were taken by the plaintiff to lead secondary evidence to prove these documents till the filing of the present application on 29th October, 2024. The plaintiff cannot wake up after seven years to take steps to lead secondary evidence. Reliance in this regard may be placed on ***Jai Prakash Aggarwal v. State & Ors.***, 2017 SCC OnLine Del 6478, wherein a Coordinate Bench of this Court observed as follows:

“15. I have enquired from the counsel for the petitioner, whether the petitioner has otherwise laid foundation for leading secondary evidence with respect to the document dated 16th April, 1986.

...

17. Neither of the two witnesses examined as attesting witnesses have in their testimony laid any foundation for leading secondary evidence.

...

22. ...the person wanting to prove the existence and execution of a



document by secondary evidence, before doing so, is first required to prove the existence of one of the several situations in which Section 65 permits proof of a document by secondary evidence and thereafter prove the document by secondary evidence of the form and the kind permitted in that situation. Without fulfilling this twin task, no document can be said to have been proved by secondary evidence.”

17. In order to lead secondary evidence, a party has to lay down the foundational evidence for the same, in the absence of which, secondary evidence would be inadmissible. Reference may be made to ***RMC Project Management International, LLC v. Whizlabs Software Private Limited and Others***, 2023 SCC OnLine Del 5169, wherein a Coordinate Bench of this Court held that no case has been made out by the plaintiff for grant of permission to prove documents by way of secondary evidence. The relevant extract from the aforesaid case is set out below:

“64. ...The plaintiff cannot claim benefit of its own neglect. In fact, Section 65(c) of the IEA requires that the party wanting to prove a document through secondary evidence stating the reason as destruction or loss of the document, should itself not be in default or neglect. The same cannot be said for the plaintiff in the facts and circumstances of the present case.

*65. It is also relevant to reiterate here that the defendants raised specific objections to the marking of the exhibits on the documents, on the ground that the originals thereof had not been produced. The objections were filed on 04.10.2016. Even thereafter, the plaintiff took no steps to locate the alleged application or to file fresh certified copies of the documents of registration on record. As rightly contended by the learned senior counsel for the defendants, the documents were marked as exhibit on 28.09.2015 in absence of the defendants. On the said date, the right of the defendants to cross examine PW-1 was closed. The same was, however, re-opened by an order dated 29.01.2016. The defendants before cross examining the PW-1, filed their objection to the marking of exhibits on the documents. In spite thereof, the plaintiff took no steps to have the originals of the certified copies of the documents placed on record, or even file an application as to why it should be permitted to prove the documents by secondary evidence. In *H. Siddiqui (Dead) by LRs v A. Ramalingam*, (2011) 4 SCC 240, the Supreme Court held that a party cannot be allowed to rely on secondary evidence unless the*



circumstances stipulated in Section 65 of the IEA are satisfied by such party.”

[Emphasis Supplied]

18. In light of the discussion above, the plaintiff in the present suit has failed to show any due diligence on its part to lead secondary evidence despite being aware that it did not have in its possession the originals of the aforesaid documents.

19. The only explanation given by the plaintiff for writing the aforesaid letters between 15th November, 2023 and 13th February, 2024 is that the plaintiff was trying to obtain the current contact details of third-parties who it believed were in possession of the originals of the aforesaid documents. It is inconceivable that the plaintiff was unable to obtain correct contact details of the said third-parties for over five years. Mere bald averments have been made on behalf of the plaintiff in this regard. The justification given by the plaintiff that it could not do so earlier on account of the onset of COVID-19 is untenable.

20. The submission made on behalf of the plaintiff that since the aforesaid documents came into existence only in the recent past, and there was no occasion for it to file the same at an earlier stage, is also devoid of merits. If this were to be true, a party can keep writing letters during the pendency of a suit to further its case and subsequently, place them on record by taking a stand that they came into existence after filing of the suit.

21. The aforesaid letters have been issued by the plaintiff in order to further its cause in the suit. Therefore, only because these letters have come into existence after filing of the present suit and before filing of the present application, would not be a ground to take them on record. Moreover, even



though the four letters, which are sought to be placed on record by the plaintiff, were sent between 15th November, 2023 and 13th February, 2024, the present application was filed only in November 2024. This amplifies the lackadaisical approach of the plaintiff.

22. As rightly pointed out by counsel for the defendant, the present application has been filed to place not only additional documents on record but also an additional affidavit of evidence of the plaintiff's witness. The plaintiff has already filed multiple affidavits of evidence in the present suit. By seeking to file an additional affidavit of evidence, the plaintiff is trying to improve its case which cannot be permitted at this stage. In fact, the plaintiff, by way of this additional evidence affidavit, is seeking to lay the foundation for leading secondary evidence, which it ought to have done long back.

23. Allowing the aforesaid documents to be taken on record at this stage would be completely contrary to the statutory scheme laid in place for conduct of commercial suits. The plaintiff cannot be permitted to file documents as per its whims and fancies at any stage of the suit. The whole purpose of expeditious disposal of commercial suits would be frustrated if the parties are permitted to file additional documents at any stage of the suit.

24. In this regard, reference may be made to the observations of the coordinate bench in *Nitin Gupta v. Texmaco Infrastructure & Holding Limited*, 2019 SCC OnLine Del 8367, which are set out below:

“38. 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 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.”

[Emphasis Supplied]

25. The consistent view of this Court has been that, in commercial suits, timelines are to be strictly followed. The expression ‘reasonable cause’ occurring in Order XI Rule 1(5) of the CPC has to be a cause which is outside the control of the plaintiff and prevented the plaintiff from filing the additional documents at the relevant stage. Reference in this regard may be made to ***Bela Creations Pvt. Ltd. v. Anuj Textiles***, 2022 SCC OnLine Del 1366, and ***Rishi Raj v. Saregama India Ltd.***, 2021 SCC OnLine Del 4897.

26. As regards the submission of the plaintiff that no prejudice would be caused to the defendant if the aforesaid documents are taken on record, the same is meritless. Clearly, prejudice has been caused to the defendant on account of filing of the present application as the trial in the suit, which began on 18th March 2019, has been inordinately delayed. The plaintiff has been taking multiple adjournments and delaying the trial in the suit on one pretext or the other.

27. In ***Eicore Technologies Pvt. Ltd. and Others v. Eexpedise***



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Technologies Pvt. Ltd. and Others, 2022 SCC OnLine Del 4012, a decision relied upon by the plaintiff, issues were yet to be framed when the application for additional documents was filed on behalf of the plaintiff. Hence, reliance on the aforesaid case on behalf of the plaintiff is misplaced.

28. In view of the discussion above, the plaintiff has failed to give any justifiable or acceptable explanation for filing these documents at such a belated stage. Accordingly, I do not find merit in the application and the same is dismissed with costs of Rs. 25,000/-. The aforesaid costs shall be paid by the plaintiff to the defendant within two weeks.

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29. List before the Joint Registrar on 9th April, 2025.

**AMIT BANSAL
(JUDGE)**

FEBRUARY 28, 2025

at