

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

% **Reserved on: 14th September, 2022**
Decided on: 10th October, 2022

+ **I.A. 11509/2021 IN CS(OS) 1753/2013**

M/S JINDAL DRILLING AND INDUSTRIES LTD

.....PLAINTIFF

Through: Mr. Pradeep Diwan, Sr. Advocate
with Mr. Harshil Gupta & Mr. Dhruv
Gupta, Advocates.

versus

NARESH KUMAR AGARWAL AND OTHERS

.....DEFENDANTS

Through: Mr. Ratan K Singh, Sr. Advocate
with Mr. Rajeev Gurung, Advocate
for D-1 & 6.
Mr. Kanishka Sr. Advocate for D-2.
Mr. Abhishek Bhushan Singh,
Advocate for D-3.
Mr. Nikhilesh Krishnan, Advocate for
D-4 & 5.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E N T

NEENA BANSAL KRISHNA, J

I.A. 11509/2021

1. An application under Order XI Rule 21 Read with Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC"*) has been filed on behalf of the defendant no. 1 for dismissal of the suit of the plaintiff

for non-production of the documents as directed by the Court.

2. The plaintiff has filed a suit for recovery of ₹14,92,00,000/- and for rendition of accounts. The defendant has stated that this Court vide Order dated 26th September, 2019 allowed the I.A. No. 11042/2019 under Order XI Rule 12 CPC filed by defendant no. 1 with the following directions:

“The plaintiff to file affidavit with respect to the documents of which discovery is sought, within one month from today. The documents, possession and custody of which is admitted, be filed along with the said affidavit”

3. It is submitted that out of 33 documents mentioned in the said application, the plaintiff has filed only 11 documents, that too photocopies, and blatantly refused/neglected to file remaining documents by taking totally baseless, untenable and impermissible pleas. The plaintiff has failed to file the documents, possession and custody of which is expressly admitted by the plaintiff.

4. The plaintiff had challenged the aforesaid Order before the Division Bench of this Court vide FAO(OS) No. 227 of 2019 but the Appeal was dismissed by the Hon’ble Division Bench vide Order dated 24th February, 2020. The Discovery Order dated 26th September, 2019 thus attained finality and is binding on the parties.

5. It is asserted that only on repeated directions by the learned Joint Registrar, the plaintiff finally filed an Affidavit dated 15th February, 2021 along with photocopies of some documents, purported to be in compliance of the Discovery Order dated 26th September, 2019. The perusal of the said Affidavit shows the obstinacy and contumacy on the part of the plaintiff and demonstrates its deliberate and willful attempt to disregard/disobey the

discovery Order passed by this Court.

6. It has been explained that the plaintiff has admitted the documents at serial no. 6, 19, 23 and 24 of the application as being in its possession and custody. Document no. 6 are the quarterly reports of the Plaintiff Company as periodically reported to its Board of Directors, showing Inter-Corporate loans and investments for the period from 1st April, 2008 to 30th March, 2013. However, the plaintiff has refused to file this document on record by claiming that the defendant no. 1 has unnecessarily sought Quarterly reports which are 20 in number running into hundreds of pages, which has no relevance.

7. The Documents at Serial No. 19 show that as on 30th November, 2012, Mr. D P Jindal, his family members and his closely held entities were 100% stakeholders in Jindal Pipes Ltd. The plaintiff in respect of these documents has asserted that the documents sought are vague and are not specific and therefore, cannot be provided. Moreover, the documents sought pertain to Jindal Pipes Limited which is not a party to the present suit and the documents have no relevancy with the subject matter of the present suit since it pertain to the period of November, 2012 while defendant no. 1 was removed from the Directorship of the Plaintiff Company in March, 2011.

8. Document No. 23 relates to Loan Guarantees given by the Plaintiff Company to/for various related parties during the period from September, 2010 till date and Interest/ Guarantee fee earned by the Plaintiff Company on the same during the said period.

9. Document No. 24 relates to party transactions submitted by Plaintiff Company's Finance department for the Board Meetings held during the financial year 2009-2010. It is asserted that in respect of these documents it

has been admitted that the Annual Reports are in the possession of Plaintiff Company but the same are not being filed herewith because they are extremely voluminous. The defendant has asserted that the plea of plaintiff that the documents are voluminous and not relevant, cannot be permitted to be raised at this stage when the Court has already directed the documents to be discovered.

10. Defendant no. 1 has further asserted that the plaintiff has admitted to being in possession of document no. 11- showing Mr. Anil Jain to be the Vice President of DP Jindal Group Companies as on 27th March 2009 and document no. 12- showing Mr. Anil Jain as Chief Financial Officer and Vice President of Jindal Group of Companies, including Maharashtra Seamless Limited. Document no. 12 shows the tenure of employment of Mr. Anil Jain with the various D P Jindal Group Companies. Likewise, Document no. 31, 32 and 33 are bid documents, list of persons employed by Jindal Pipes Limited and employees working for Oil and Gas related work of Jindal Pipes Limited, respectively. However, the plaintiff has refused to provide these documents on the ground that Mr. Anil Jain was not the Vice President of the Plaintiff Company but was the CFO of Maharashtra Seamless Limited. Moreover, it is asserted that these documents pertain to different entities which are not a party to the present suit. Maharashtra Seamless Limited is a Public listed Company and the documents pertaining to this Company can be obtained from the Ministry of Corporate Affairs.

11. The defendant has claimed that the third category of documents are at serial nos. 9, 10, 25, 26, 27, 28 and 29 which have not been filed by the plaintiff on the ground that the same do not pertain to the plaintiff.

12. The defendant has claimed in his application that the plaintiff in its

affidavit has admitted possession and custody of the documents but is refusing to produce the documents on frivolous reasons and the non-production of these documents is in disregard and violation of the Order dated 26th September, 2019 of this Court. The plaintiff cannot refuse to produce the same at this stage. The plaintiff has willfully not complied with the Discovery Order dated 26th September, 2019 and therefore the present suit is liable to be dismissed under Order XI Rule 21 CPC with cost.

13. **The plaintiff in its reply** to the application has submitted that due compliance of the Order dated 26th September, 2019 has been made to the best of its ability and the available documents have been filed except those for which requisite leave has been sought herein. It is claimed that the application is absolutely frivolous, vexatious and liable to be dismissed and is intended to delay and prolong the suit of the plaintiff. It is asserted that the present application is beyond the purview of the Order dated 26th September, 2019. In compliance of the Order, the plaintiff has filed its affidavit dated 15th February, 2021 stating its stand apropos each and every document while also filing the documents along therewith and nothing was withheld by the plaintiff. It is asserted that the relevance of the documents is yet to be examined by this Court and for this reason the plaintiff was allowed to state its stand for each and every document in its affidavit.

14. It is further submitted that in the I.A. No. 11042/2019 under Order XI Rule 12 CPC, filed by the defendant, the prayer was made for discovery of documents and no prayer for production of documents was made. The Order dated 26.09.2019 therefore, cannot be deemed to be an Order for discovery of documents under Order XI Rule 12 CPC or an Order of inspection of Documents under Order XI Rule 18 CPC and the harsh and penal

consequences provided under Order XI Rule 21 CPC cannot ensue.

15. The defendant no. 1 has not been able to show any willful or deliberate breach or disobedience of the Order of the Court. The application on the face of it has been filed with the ulterior purpose of drawing self-arrived inferences and to do fishing and roving enquiry by seeking documents, which are not even relevant for the disposal of the suit. The documents sought by the defendant no. 1 do not relate to the relevant period, when the money transactions took place in the month of March, 2009. Rather, the description of documents contain a tacit admission on the part of the defendant no. 1 that he personally used to control the transactions of the plaintiff. It is claimed that the purpose of production of documents is not to encourage any party to develop a cross-examination of the witnesses to be produced by the other party. The filing of irrelevant documents would not only cause delay but would also widen the spectrum of documentary and oral evidence. It is submitted that the present application is frivolous and without any merits and is liable to be dismissed.

16. **Learned counsel on behalf of the defendant has submitted during the course of arguments** that he is restricting his present application only to **Document No. 6** which is quarterly reports of the Plaintiff Company for the period from 1st April, 2008 to 30th April, 2013 and to **Document No. 3** which is the re-structuring Scheme of the Plaintiff Company as approved on 23rd April, 2010. It is argued that the plaintiff has taken different stands at different stages. In his reply dated 26.08.2019 to the present application, the plaintiff had claimed that there was no such report to the knowledge of the plaintiff, to show that an inter-corporate loan of ₹8.5 Crores was taken and also asserted that this document was irrelevant. In Discovery affidavit dated

15th February, 2021 submitted by the plaintiff, it was asserted that defendant no. 1 has unnecessarily sought quarterly reports from the year 2008 to 2013 which have no relevance to the present matter. In the reply to the present application, it is asserted that the plaintiff has misunderstood the documents sought as Annual Reports which were mentioned at serial No. 23 and 24 and had been filed along with the reply.

17. Likewise, in respect of Document no. 3, the plaintiff has taken a different stand in his reply to the earlier application for discovery, his affidavit of discovery, and his reply to the present application. He vehemently argued that the shifting stands taken by the plaintiff at different stages show that he has intentionally and willfully withheld the documents and his contumacious conduct invites dismissal of his suit under Order XI Rule 21 CPC.

18. In support of his assertions, defendant has placed reliance on Hindustan Zinc Limited vs. Durga Construction Pvt. Ltd 2021 SCC OnLine Del 3333, M/s. Narosa Publishing House vs. Jagbir Singh in Suit No. 182/1997 decided on 09.10.1999 and Sh. Shravan Kumar Gupta Vs. Sh. Tara Chand Gupta and Ors in I. A. No. 895/2013 decided on September 12, 2013.

19. **Learned counsel for the plaintiff has argued** that Order XI of CPC deals with 3 aspects namely interrogatories, discovery of documents and inspection of documents. The Order XI Rule 12 provides for discovery of documents by either of the parties, on an affidavit. Rule 16 further provides that the Court may at any stage during the pendency of the suit, Order the production of the documents. Rule 21 provides the consequences of non-compliance with the Order for discovery. It specifically provides that in case

the party fails to comply with an Order to answer interrogatories or for discovery or for inspection of documents, the suit is liable to be dismissed or the defence is liable to be struck off as the case may be. There is no consequence given in Rule 21 CPC in respect of non-production of documents in compliance of the Order of the Court under Rule 14. Therefore, even if the Court has directed production of documents pursuant to the discovery of the documents by a party, the consequence of dismissal of the suit under Rule 21 CPC cannot follow. The only consequence for non-production can be in terms of Order XII CPC. It is argued that the defendant himself has admitted in his application that an affidavit admitting or denying the possession of the documents has been filed by the plaintiff which implies that the due compliance of the Order of the Court dated 26 September, 2019 has already been made by the plaintiff and the consequence of dismissal of the suit under Rule 21 of CPC cannot follow.

20. The plaintiff has placed reliance on Babbar Sewing Machine Company vs. Trilok Nath Mahajan (1978) 4 SCC 188, Desh Raj Gupta Vs. State (1987) ILR 2 Delhi 153, Union Bank of India and Ors. Vs. Hemantlal Ranchhodbhai Vegad AIR 1991 GUJ 113, Chandan Lal Jour Vs. Amin Chand Mohan Lal and Ors. AIR 1960 P&H 500, Lajpat Rai Vs. TejBhan and Ors. AIR 1957 P&H 14.

21. **Submissions heard.**

22. The Legislature with an intent to empower the Court to require the parties' adversary to answer interrogatories or to give a discovery of documents on affidavit or permit inspection of certain documents, has enacted the provision of Order XI CPC with an object to provide for fair disposal of suit and to reduce litigation expenses. The primary object is to

assist the Court in administration of justice. It necessarily follows that the Court must judicially exercise its discretion keeping this object in view. In Lajpat Rai (Supra) while highlighting the aforementioned objects of this provision, it was observed that an Order granting discovery and inspection in some cases, results in serious prejudice and injury to the party that has to comply with it and therefore, it is necessary that the court shall apply its mind carefully before making any Order. It is not the intention of the Legislature that such orders should be made as a matter of routine and of no serious consequence.

23. Wallace. J. in K. V. Ramachari V. K.V. Krishnama Chari AIR 1924 Mad 846 had observed that a privilege, such as inspection by a party of his adversary's documents is not a matter of routine, but is to be permitted or refused only after a judicial decision and not as a right to the inspection itself, but with reference also to the stage of the case at which such right is to be permitted and that it is to be so exercised so as to result in as little harm as possible to the parties who are entitled to have the protection of the Court in carrying on their lawful pursuits.

24. **Order XI CPC** deals with discovery and inspection. This Order may be classified into three categories:

- i. ***Discovery by interrogatories*** which is dealt by Rule 1 to Rule 11 of CPC.
- ii. ***Discovery and production*** of documents which is dealt with in Rule 12 to Rule 14 of CPC.
- iii. ***Inspection*** of documents which is dealt under Rule 15 to Rule 20 of CPC.

25. Order XI Rule 14 empowers the Court at any point to order the

production of such documents relating to any matter in question in a suit as are in the power and possession of a party as the Court thinks right. On production of the documents, the Court is empowered to deal with such documents it appears to the Court to be just.

26. Learned counsel on behalf of the plaintiff has argued that though Rule 14 CPC gives the discretion to the Court to direct production of documents in respect of which a discovery has been done by either party under Rule 12 on an affidavit, but Rule 21 is not applicable to non-compliance of the Order of production of a document under Rule 14.

27. The consequence of non-compliance of the directions under various Rules is given in Rule 21 of Order XI CPC which provides that in case of non-compliance of any Order in respect of interrogatories, discovery or inspection, the consequence of dismissal/striking out of defence may follow as the case may be. It reads as follows:

“Rule 21. Non compliance with Order for discovery.-

*(1) Where any party fails to comply with any Order to answer **interrogatories**, or for **discovery** or **inspection of documents**, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the court for an Order to that effect, and an Order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard.*

(2) *Where an order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action.*”

28. The consequence of non-compliance with Rule 12/14 of Order 21 was by the Madras High Court in Sithamalli Subpayyer Vs. Mala Ramanathan (1924) 46 MLG 350 wherein it was observed that Rule 21 does not apply to an Order for production as it speaks only of interrogatories, discovery or inspection. In the repealed Code, the words “or production” appeared in the corresponding section but they have been omitted in the new Code. This deletion is apparently to bring the Code in conformity with the English Rule where Order XXXI Rule 21 of English Rules of Practice did not mention the words “or production”. It was observed that only three situations are envisaged i.e. interrogatories, discovery or inspection to attract the penal provision of Rule 21. It does not apply to Rule 14 which provides for Order for production of documents. Similar observations were made in The Lyalpur Sugar Mills and Co. and Ors. v. Ram Chander Gur Shai Cotton Mills And Company AIR 1922 All 235 DB; Sahoo Munlal Vs. Tara Lal AIR 1929 All 83.

29. In Chinnappain vs. Ram Chandran AIR 1989 Mad 314, the Madras High Court followed the decision in Sithamalli Subpayyer (supra) to observe that failure to comply with the Order for production of the document, would not attract Order XI Rule 21 of CPC.

30. This Court in Maj Retd Sukesh Behl & Anr vs Koninklijke Philips Electronics in F.A.O. (OS) 458/2015 decided on 19th January, 2016, made a reference to the aforementioned judgments to conclude that failure to produce documents directed to be produced under Order XI Rule 14 would

not entitle a Court to pass an order under Order XI Rule 21 of CPC. It further observed that an order for production under Order XI Rule 14 of CPC, does not decide or affect any vital and valuable rights of the parties. The consequence of non-production does not lie under Order XI Rule 21 of CPC but the Court may in case of non-production of documents, draw an adverse inference against the erring party.

31. From the above discussion it is abundantly clear that even if there is non-compliance of Order of production of documents under Rule 14, then also there can be no dismissal of the suit under Rule 21 and the application is liable to be dismissed on this ground itself.

32. However, the facts as agitated in the present application may also be considered on merits to determine whether the plaintiff has failed to comply with the Order dated 26th September, 2019 directing the plaintiff to discover the documents as per the list furnished by the defendant and also for production of documents. The relevant part of the Order is reproduced as under:

*“The plaintiff to file affidavit with respect to the documents of which discovery is sought, within one month from today. The documents, possession and custody of which is admitted, **be filed** along with the said affidavit”*

33. The defendant no. 1 vide application under Order XI Rule 12 of CPC, had only sought discovery of documents on affidavit and there was no prayer made for production of documents. The Court in its Order dated 26th September, 2019, while allowing the application of defendant no. 1 directing affidavit of admission in respect of documents to be filed, had further invoked its jurisdiction under Rule 14 and directed the plaintiff also to

produce the documents.

34. What thus, needs to be considered is whether the plaintiff has failed to comply with the Order and the directions for production of documents as given by this Court on 26th September, 2019. To understand this controversy as raised by the defendant, it would be pertinent to refer to the two documents (to which the defendant has restricted his relief) and the responses of the plaintiff.

35. In **respect of document no. 6** seeking production of quarterly reports of the plaintiff Company for the period from 1st April, 2008 to 13th March, 2013, the plaintiff has explained in his affidavit the quarterly reports were misunderstood as Annual Reports, but they have now been filed on record.

36. Likewise, in **respect of document no. 3**, with respect to the re-structuring scheme of the Plaintiff Company as approved on 23rd April, 2010, it has been explained in the plaintiff's replication that no re-structuring of the Company to divide and give the business to defendant no. 1 was ever done and that it was a mere proposal to re-structure. Likewise, in their reply to the application under Order XI Rule 12 CPC, it has been stated that no re-structuring Scheme was approved on 23rd April, 2010. In the reply to the present application, it has been clarified that though the re-structuring was approved in May, 2010 but the same was subsequently cancelled on 09th November, 2010.

37. Learned counsel on behalf of the plaintiff has further explained that re-structuring was agreed in principle in the meeting held in May, 2010, but no document whatsoever in regard to re-structuring was formulated and since no such document exists, the same cannot be produced on record. It is thus, explained that only the proposal of re-structuring was approved but the

said approval also got cancelled subsequently and no document of restructuring either by way of approval or as sanctioned ever came into existence.

38. From the explanation, as given by the plaintiff in respect of the two documents to which the present application was confined by defendant no. 1, it is quite evident that there is no disobedience or non-compliance of the Order dated 26th September, 2019 by the plaintiff.

39. In this context, it would be pertinent to refer to the observations of Supreme Court in Babbar Sewing (Supra) wherein it was held that penalty imposed by Order XI Rule 21 CPC is of a highly penal nature and ought only to be used in extreme cases and should in no way be imposed unless there is a clear failure to comply with the obligations laid down in the Rule. In Sh. Shravan Kumar (Supra) reference was made to Halsbury's Laws of England, 4th Edition, Vol. 13 page 32 to observe that even if in certain circumstances the provision of Order XI Rule 21 CPC must be strictly enforced, it does not follow that a suit can be lightly thrown out or defence struck out without adequate reasons. The **test laid down** is whether the default is willful. It is only if the court is satisfied that the plaintiff was willfully withholding information by refusing to answer interrogatories or by withholding the documents that the plaintiff must face the consequences of having his plaint dismissed due to his default i.e. by suppression of information which he was bound to give. It was further observed that the stringent provisions of Order XI Rule 21 CPC should be applied only in extreme cases, where there is contumacy on the part of the defendant or a willful attempt to disregard the order or the Court. In Khajah Assenoola Joo Vs. Khajah Abdool Aziz I.L.R Cal. 923, it was observed that this rule must

be worked with caution and may be used only as a last resort.

40. In the present case as discussed above, the circumstances do not depict any contumacy or deliberate and willful disobedience on the part of the plaintiff calling for imposition of this extreme penalty of dismissal of the suit. Even otherwise, no case for dismissal of suit is made out as not only the compliance of the Order of the Court has been made but also because the law does not contemplate dismissal of suit if there is non-compliance of Order XI Rule 14 of CPC. This application is without merit and is hereby dismissed.

CS(OS) 1753/2013

1. List this matter before the Local Commissioner on 2nd November, 2022 for recording of evidence.

**(NEENA BANSAL KRISHNA)
JUDGE**

OCTOBER 10, 2022/PA

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