

2023 SCC OnLine Del 6745

In the High Court of Delhi at New Delhi
(BEFORE PRATHIBA M. SINGH, J.)

CM(M)-IPD 14/2023 and CM 132/2023

Inter Ikea Systems BV ... Petitioner;

Versus

Quess Corp Limited ... Respondent.

And

CM(M)-IPD 15/2023 and CM 135/2023, 136/2023

Quess CORP Ltd. ... Petitioner;

Versus

Inter Ikea Systems BV ... Respondent.

CM(M)-IPD 14/2023, CM 132/2023, CM(M)-IPD 15/2023 and CM
135/2023, 136/2023

Decided on October 19, 2023

Advocates who appeared in this case:

Mr. Samar Bansal, Ms. Tanya Varma, Mr. Rohan Krishna Seth & Ms.
Parkhi Rai, Adv.(M : 9999845680);

Mr. Sandeep Seth, Sr. Adv. with Mr. Manu Seshadri, Mr. Aveak
Ganguly, Mr. Abhijit Lal, Mr. Anubhav Mishra & Mr. Sahil, Advs.(M :
9910372831)

Mr. Sandeep Seth, Sr. Adv. with Mr. Manu Seshadri, Mr. Aveak
Ganguly, Mr. Abhijit Lal, Mr. Anubhav Mishra & Mr. Sahil, Advs.;

Mr. Samar Bansal, Ms. Tanya Varma, Mr. Rohan Krishna Seth & Ms.
Parkhi Rai, Adv..

The Judgment of the Court was delivered by

PRATHIBA M. SINGH, J.:— This hearing has been done through
hybrid mode.

2. These are two cross petitions filed under Article 227 of the
Constitution of India challenging order dated 3rd July, 2023 passed by
the Id. Additional District Judge (ADJ)-02, South Saket Courts
Complex, Saket, New Delhi. The petitions arise out of suit *TM No.*
58/2016 titled *Ikea Trading v. Quess Corp. Limited* By way of the
impugned order, the application filed by the Defendant-Quess Corp.
Limited under Order VIII Rule 1A CPC was partially allowed and certain
documents filed by the Defendant were taken on record. While the
Plaintiff challenges allowing of some of the documents to be taken on
record, the Defendant challenges disallowing it from bringing its annual

reports from FY 2007-2008 to FY 2013-2014 on record. The relevant portion of the impugned order reads as under:

“18. In the present case, the defendant wants to bring on record, inter alia, the copy of its board resolution i.e. an authority to the witness to depose on behalf of the defendant, certificate of incorporation pursuant to the change of name of the defendant and memorandum of association of the defendant company. All these 3 documents are necessary to be brought on record to prove the existence of the defendant company and the authority in favour of its witness. Therefore, these documents are relevant to decide the suit on merits. Filing of such documents even at the stage of final arguments is generally allowed by the Courts.

19. The defendant also wants to bring on record certain documents mentioned at Sr. No. vi to xii and xiv. These documents prima-facie appears to be relevant to decide the real controversy in issue. These documents were not in existence at the time of filing of the WS by the defendant. No prejudice is shown to be caused to the plaintiff if these documents are taken on record. The relevancy of these documents can be decided during the trial. However, at this stage, the documents prima face appears to be relevant to decide the real controversy.

20. Further, documents at Sr. No. xiii are printouts of certain email received from M/s Ikea India Pvt. Ltd. by the defendant company. These printouts are of 31.06.2018. Therefore, they could not have been filed with the WS by the defendant. Similarly, the documents mentioned at serial no. 14 are print out of web pages of the website maintained by the defendant. Therefore, they could not have been filed along with the WS. Again, these documents prima facie appear to be relevant to decide the issue in controversy. The document mentioned at Sr. no. v. is copy of an article published in a magazine. Thus this document does not appear to be in possession of the defendant at the time of filing of the WS.

21. The defendant has mentioned various documents at S. No. iv as above mentioned. These are the relevant extracts from certified copies of Form 23 - AC and Form AOC-4 along with annexures and annual reports of the defendant company for the financial year starting from 2007-2008 till financial year 2021-2022. Now, these are the annual reports of the defendant company. The WS in the present case was filed by the defendant on 20.03.2014. Therefore, the annual reports of the defendant company for the financial year 2007-2008 to financial year 2013-2014 must have been in possession of the defendant at the time of filing of the WS. There is no reason mentioned in the application as to why

these reports for financial year starting from 2007-2008 to financial year 2013-2014 were not filed along with the WS. The rest of the financial reports are of the period after filing of the WS by the defendant and therefore, they could not have been filed with the WS. The financial reports of the defendant company prima facie appear to be relevant to decide the present suit on merits. However, in view of the settled position of law laid down by the Hon 'ble High Court of Delhi in judgment titled Naresh Arneja v. Atul Gupta (Supra), Gold Rock World Trade Ltd. v. Veejay Lakshmi Engineering Works Ltd. (Supra), LT Overseas North America Inc. v. Sachdeva & Sons Pvt. Ltd. (Supra), Crocs Inc. USA v. Action Shoes Pvt. Ltd. (Supra), I am of the considered opinion that the financial annual reports of the defendant company for the financial years 2007 -2008 to financial year 2013 - 2014 cannot be allowed to be taken on record as the defendant has failed to show any reason in the application as to why those documents were not filed along with the WS by the defendant.

22. In the light of the discussion hereinabove, the application of the defendant is partly allowed. The defendant is allowed to bring on record the documents mentioned at Sr. No. i to iii and v. to xiv. The defendant is also allowed to bring on record the annual reports of the defendant company for the financial year 2014-2015 to financial year 2021-2022. However, the prayer in the application to bring on record annual reports for the financial years 2007 - 2008 to financial year 2013 - 2014 is declined"

3. The Plaintiff claims rights in the mark 'IKEA'. The suit in question was filed before the Id. ADJ seeking permanent injunction in respect of use of the mark 'IKYA' by the Defendant. Initially, an *ex-parte* injunction was granted on 11th January, 2013 by the Id. ADJ which was, thereafter, vacated vide order dated 3rd August, 2015. The matter was re-heard upon being remanded by this Court in *FAO No. 377/2015*, and vide order dated 6th January, 2016 the vacation of the interim injunction was again confirmed.

4. The order dated 6th January, 2016 was again challenged before this Court in *FAO No. 157/2016* in which a trial schedule was fixed by this Court vide order dated 8th August, 2017 in the following terms:

"FAO No. 157/2016 and CM. No. 6654/2017(stay)

1. *It is noted that the main appeal being FAO No. 157/2016 is against the impugned order dated 6.1.2016 and which impugned order is in the nature of an interim order disposing of the applications under Order 39 of Civil Procedure Code, 1908 (CPC). The appellant/plaintiff has been denied the relief of interim injunction and in fact interim order obtained by the*

appellant/plaintiff has been vacated by the impugned order dated 6.1.2016.

2. *Today now it is over one and half year since passing of the impugned order and in around this time possibly the suit itself would have been disposed of had the trial court record not come to this Court. I fail to understand any need of the original trial court record of the suit in the appeal against the interim orders because the effect of summoning of the trial court record is automatic stay of proceedings in the suit although a specific order of injunction staying proceedings in the suit is not passed.*
3. *At this stage, it is agreed that since the trial court record has to be sent back and the same be sent back by a special messenger, trial court will frame the issues in the main suit within four weeks of the trial court record being received by the trial court and thereafter it is agreed that both the parties will not get more than three opportunities each to complete leading of their evidence in affirmative failing which right of party to lead evidence who has not completed evidence in three opportunities shall be deemed to be closed Trial court is requested to ensure that hearing of final arguments in the matter is complete within three months of the recording of the evidence....."*

5. Vide the above order, the Court had also appointed a Local Commissioner for recording of the evidence. A perusal of the above order would show that issues were to be framed in four weeks and parties were directed not to take more than three opportunities to complete their evidence in affirmative. The final hearing was also directed to be completed within three months after recording of evidence.

6. Despite such specific directions being issued by the Appellate Court, the events that transpired in the suit would show that the issues were framed only on 30th October, 2017. The Plaintiffs first witness tendered evidence and was cross-examined on two occasions. More than 125 questions were put to the said witness in cross examination. The said witness, thereafter, left the employment of the Plaintiff which resulted in the witness being replaced with an overseas witness of the Plaintiff. The said overseas witness travelled to India thrice for recording of evidence on seven separate days. It is noticed by the Court that more than 250 questions have been put to the witness. The evidence of the overseas witness was finally closed on 20th October, 2022.

7. Thereafter, the Defendant was to file its evidence, however, at

that stage an application was moved by the Defendant seeking to place on record a large number of documents running into 2,300 pages. It is this application which has been disposed of vide the impugned order dated 3rd July, 2023.

8. Ld. counsel for the Plaintiff submits that the entire purpose behind filing the application is to delay the trial in a suit which is more than 13 years old. It is also the submission of Id. Counsel that the majority of the documents that are sought to be produced relate to a period prior to filing of the written statement and prior to framing of issues. Thus, in his submission, such indiscriminate filing of documents at the late stage cannot be permitted. On the other hand, Id. Counsel for the Defendant submits that the documents that are sought to be produced are related to the period post the filing of the written statement substantially and they are public documents. Thus, they should have been taken on record in entirety.

9. Heard Id. Counsel for the parties and perused the record. The procedural delays which have transpired in the present suit are exactly the issues that the Commercial Courts, Act, 2015 seeks to address. Unending filing of documents, a large number of witnesses being produced, cross-examination over several hearings, unnecessary inconvenience being caused to witnesses especially coming from outstation or overseas etc., has become a malaise. These are the attempts that ought to be avoided by parties especially in commercial suits. Unfortunately, the present case is not governed by the Commercial Courts Act, 2015 as it was filed in 2012 and is being heard before the Id. ADJ, who is not notified as a Commercial Court. Thus, the unamended CPC is applicable to the dispute at hand. Order VIII Rule 1A CPC reads as under:

1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.-(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

- (4) *Nothing in this rule shall apply to documents-*
- (a) *produced for the cross-examination of the plaintiffs witnesses,*
or
- (b) *handed over to a witness merely to refresh his memory.*

10. The general position of law in non-commercial suits is that the Defendant has to file the documents that it seeks to rely upon along with the written statement. For any belated filing, leave of the Court is required before the document is taken on record. The Supreme Court in *Sugandhi v. P. Rajkumar*, (2020) 10 SCC 706 has held that leave can be granted on good cause for non-production being shown by the Plaintiff. The relevant portion of the judgment reads as under:

"8. Sub-rule (3), as quoted above, provides a second opportunity to the defendant to produce the documents which ought to have been produced in the court along with the written statement, with the leave of the court. The discretion conferred upon the court to grant such leave is to be exercised judiciously. While there is no straight jacket formula, this leave can be granted by the court on a good cause being shown by the defendant

9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3)."

11. It is unfortunate that the Defendant has sought to file more than 2,300 pages of documents after the conclusion of the Plaintiffs evidence. The Court has perused the said list of documents which shows that a bulk of them were merely annual reports from the years 2007 till 2022. There can be no reason as to why all these documents i.e., the annual reports till 2017 could not have been filed by the Defendant prior to framing of issues, when the Ld. Single Judge had put the suit on fast-track trial by appointing a Local commissioner for recording evidence. The Court does not find any plausible reason to allow such a substantial number of documents to be filed after the conclusion of the Plaintiff's evidence as there is no justifiable cause forthcoming for taking such documents on record.

12. After having heard Id. Counsel for the parties and considering the record as also the events that have transpired in past 12 years

during the pendency of the suit, it is deemed appropriate to issue the following directions both in respect of the impugned order as also for expedited disposal of this suit which shall be adhered to by the parties:

- i. In the list of documents there are a total number of 29 documents. Considering the overall conspectus of the matter and the stage of the suit, with the consent of parties, the following documents are permitted to be taken on record:

Doc No. (as filed)	Doc No. (as per the Impugned Order)	Particulars of the list of documents
1.	(i)	Board Resolution dated 30.10.2022
2.	(ii)	Certified copy of the fresh certificate of incorporation consequent change of name to Qess Corp Limited
3.	(iii)	Certified copy of the Memorandum of Association (MOA) of the Defendant company
20.	(vi)	Shareholder's Annual report for the financial year 2021-2022 published by the Defendant company (Pg. 1 to 269)
21.	(vii)	Corporate presentation titled 'Winning together with Qess Corp. published in November 2022 published by the Defendant company
22.	(viii)	Press release titled Qess Corp headcount reached 500K milestone; Announced interim dividend of INR 8 per

		share for FY 23 published on 09.11.2022 by the Defendant company
23.	(ix)	Investor presentation for second quarter and half year ended 30 September 2022 published on 09.11.2022 by the Defendant company
24.	(x)	Corporate presentation brochure titled Employing a diverse India-Quess at 500K published in November 2022 by the Defendant company
27.	(xii)	Hon'ble High Court's judgment dated 29.10.2018 passed in FAO No. 157 of 2016
28.	(xiii)	Email dated 31.06.2018 received from M/s Ikea India Private Limited by the Defendant company
29.	(xiv)	Printouts of extracts of web-pages hosted on www.quescorp.com maintained by the Defendant company

ii. In addition, insofar as the list of witnesses is concerned, a perusal of the list of witnesses also shows that the Defendant's list consists of 14 witnesses. The same read as under:

1. Mr. Lohit Bhatia, President, Workforce Management Division of the Defendant company.

2. Mr. Kundan Lal, Company Secretary of the Defendant company.

3. Mr. Madhu Damodaran, Group Head-Legal of the Defendant company.

4. *Public Official from Finance Department of the Defendant company*
 5. *Ms. Reeba Zachariah or the Editor of Times of India, Bangalore Edition, along with the original record of the newspaper issue dated 28.07.2014*
 6. *The Editor of Samyuktha Karnataka, Bangalore Edition, along with the original record of the newspaper issue dated 03.07.2014.*
 7. *The Editor of Andhra Jyothi, Bangalore Edition, along with the original record of the newspaper issue dated 03.07.2014.*
 8. *The Editor of Kerala Kamudi, Bangalore Edition, along with the original record of the newspaper issue dated 03.07.2014.*
 9. *Mr. Rahul Sachitanand or the Editor of Business Today magazine, along with the original record of the Business Today magazine issued on June 26, 2011.*
 10. *The Editor of Forbes India magazine, along with the original record of Forbes India magazine issued on October 7, 2011.*
 11. *Public Officer from Employees State Insurance Corporation.*
 12. *Public Officer from Employees Provident Fund Organisation.*
 13. *Public Officer from Trademark Registry.*
 14. *Public Officer from Registrar of Companies."*
- iii. The Defendant is permitted to lead the evidence of Mr. Lohit Bhatia, President Workforce Management of the Defendant Company and Mr. Kundan Lal, Company Secretary. In case Mr. Lohit Bhatia is not available, Mr. Madhu Damodaran, Legal Group head of the Defendant Company, is permitted to be the Defendant's witness on facts, on behalf of the Defendant. In addition, one Chartered Accountant is permitted to be deposed by the Defendant in order to prove the sales turnover figures, profit and loss figures and the list of clientele, if deemed necessary by it. The said CA shall peruse the annual reports, balance sheets, etc., of the Defendant and then file the evidence affidavit.
- iv. Insofar as proving of press clippings are concerned for which officials from various media publications are sought to be produced by the Defendant, the press clippings that are already on record shall be exhibited with the consent of parties and the parties can contest the contents of the said press clippings, as may be necessary, at the time of final arguments.
- v. Insofar as the documents from the office or website of the Registrar of Trademarks and Registrar of Companies are concerned, the same shall be exhibited with the consent of parties subject to any submissions to be made with respect thereof at the time of final hearing.

vi. The Id. ADJ shall appoint a Local Commissioner for recording of the Defendant's evidence which shall now be concluded by end of February, 2024. The matter shall then proceed for final arguments. vii. Any attempt by either party to unnecessarily delay shall be dealt with by the Id. ADJ in strict terms and shall be stringently penalised with costs.

13. List before the Id. ADJ on 6th November, 2023.

14. The petitions, along with all pending application are disposed of in the above terms.

General Directions

15. During the hearing of the present petitions, two issues have attracted the attention of the Court. The first issue is denial of public documents such as trademark registrations, records from the office of Registrar of Companies such as incorporation certificate, MoA and AoA of the Company and similar such public records. Such denial, necessitates summoning of officials and production of certified copies or other records. It is usual to note in such matters that parties tend to deny all documents belonging to the other party. In the opinion of the Court neither party should be allowed to make unreasonable blanket denials of documents which are publicly accessible such as trademark registration, records relating to Registrar of Companies, *etc.* There can be no doubt that if there is any ground as to genuinity or authenticity of the documents, the same can be denied. But *en masse* denial of such documents ought not to be permitted. This issue is adequately addressed by the *Commercial Courts Act, 2015* and the *Delhi High Court (Original Side) Rules, 2018* where unjustified denial is also not permitted.

16. Second, whenever there are outstation witnesses and overseas witnesses, the District Courts ought to ensure that such witnesses are not repeatedly called before the Court for cross-examination. Especially, in the case of commercial suits, the Commercial Courts would be fully empowered to pass directions restricting the time limit for the cross-examination in order to ensure that unreasonable inconvenience is not cause to such witnesses who may be required to travel repeatedly. Moreover, in the case of overseas/outstation witnesses if for any reason such witnesses cannot travel and the reason is found to be genuine and *bona fide*, recordal of cross-examination, after following the prescribed procedure can also be permitted through video conferencing. This would ensure that cross-examination of witnesses is not conducted in a never ending manner and such witnesses are not inconvenienced, especially, if they are to travel from foreign countries.

17. Let the present order be circulated to all District Judges, Commercial court judges and in district courts, by the Id. Registrar General of this Court.

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