



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION (L) NO. 31223 OF 2024  
IN  
COMMERCIAL SUMMARY SUIT NO. 113 OF 2019

SAFFRON DEVELOPERS PVT. LTD. )...APPLICANT  
IN THE MATTER OF  
SAFFRON DEVELOPERS PVT. LTD. )...PLAINTIFF  
V/s.  
PREMCHAND RESORTS AND APARTMENTS )  
AND OTHERS )...DEFENDANTS

Mr.Aseem Naphade a/w. Mr.Sanjay Maji, Ms.Bijal Gandhi i/by D M  
Legal Associates, Advocate for the Applicant.

Mr.Vikramjeet Garewal a/w. Mr.Siraj Menon, Mr.Avesh Ganja,  
Mr.Sandesh Panchal i/by Mr.Siraj Menon, Advocate for the Defendants.

CORAM : ABHAY AHUJA, J.

DATE : 3<sup>rd</sup> FEBRUARY 2025

**ORDER :**

1. This Interim Application seeks leave of this Court to produce certain documents consisting of balance sheets of the Defendant no.1 and email correspondence exchanged between the Plaintiff and the Defendant no.1 and thereafter to permit the Applicant to file further affidavit in lieu of examination-in-chief or permit the Applicant to

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conduct further examination-in-chief to admit in evidence the documents sought to be produced through this application.

2. Mr.Aseem Naphade, learned Counsel, appearing for the Applicant has submitted that this application has been filed under Order XI Rule 5 of the Code of Civil Procedure, 1908 ("CPC") as amended by the Commercial Courts Act, 2015. Mr.Naphade has submitted that Rule 1 of the said Order provides that the Plaintiff shall file a list of documents and photocopies of all documents in its power, possession, control or custody pertaining to the Suit along with the plaint. Mr.Naphade submits that, that is the rule, however, exception to the said rule is provided in Rule 5 where with the leave of the Court, the documents which were in plaintiff's power, possession, control or custody and not disclosed along with the plaint or within the extended period set out in the Rules shall be allowed, provided the Plaintiff establishes reasonable cause for non-disclosure along with the plaint. Mr.Naphade has submitted that the documents consist of balance sheets of the Defendants for the year ending 31<sup>st</sup> March 2014, 31<sup>st</sup> March 2015 and 31<sup>st</sup> March 2016 as well as 31<sup>st</sup> March 2017. Mr.Naphade submits that the Plaintiff has referred to the balance sheets in the plaint wherein the Defendant no.1 has admitted the debt payable to the Plaintiff.

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However, it is only in the balance sheet for the year ending 31<sup>st</sup> March 2017 that the Defendant no.1 retracted from the aforesaid admission of liability. As far as the emails are concerned, Mr.Naphade submits that the affidavit of evidence of the Plaintiff's witness refers to the emails dated 28<sup>th</sup> November 2015, 28<sup>th</sup> January 2016, 5<sup>th</sup> February 2016 and 11<sup>th</sup> February 2016 which have been exchanged between the Plaintiff and the Defendants and they relate to the matters in controversy. The said emails show that the Defendants have been reneging from their obligation to pay the monies due and payable to the Plaintiff and that these emails have also been referred to in the affidavit of evidence of the Plaintiff's witness. Mr.Naphade submits that the balance sheets and the e-mail correspondence constitute important evidence to decide the matter in controversy. It is submitted that it is not that these balance sheets and e-mail correspondence have not been disclosed but they were just not annexed or exhibited.

3. Drawing this Court's attention to paragraph 8 of the rejoinder, Mr.Naphade would further submit that this is not just a case of sheer inadvertence but lack of co-ordination. Mr.Naphade would submit that the aforesaid documents were of utmost importance to determine the real issue between the parties to the Suit and the balance sheets and

emails will assist the Court in ascertaining the truth in the matter. That, the Plaintiff has filed the present Summary Suit in respect of an admitted liability which can be seen from the balance sheet of the Defendant no.1. It is submitted that the Plaintiff inadvertently could not produce the said documents with the plaint and affidavit of evidence as the plaint and affidavit of evidence has been signed by the Plaintiff's witness Mr.Rahul Gupta, who is the director of the Plaintiff and has been ordinarily residing in Dubai since 2013 for his business whereas the Advocates of the Plaintiff are in Mumbai. Therefore, there was some lack of co-ordination and as a result, although the documents are referred to in the plaint and affidavit of evidence, were not annexed. It was only on the visit of the Plaintiff's witness to India for cross-examination that the Plaintiff realized the inadvertent non-production of the said documents and immediately filed the present application for the production of documents and for filing of further affidavit in lieu of examination-in-chief. It is submitted that the relevance of the documents has been evidently established by the Plaintiff and as the cross-examination in the present Suit has not yet commenced, the Plaintiff ought to be permitted to produce the said documents and file a further affidavit in lieu of examination-in-chief which will also allow the Defendants to raise questions regarding the

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said documents to the Plaintiff's witness. Mr.Naphade submits that neither the existence nor the contents or the relevance have been disputed by the Defendant no.1. Mr.Naphade submits that even the Defendant no.1 has referred to these documents in its reply as crucial documents. Mr.Naphade submits that, therefore, this Court allow the application as the Defendants would always get an opportunity to cross-examine the Plaintiff's witness on the same.

4. It is submitted that if the application is allowed, no prejudice or harm would be caused to the Defendants as the Defendants were always aware of the said documents as they originated from the Defendants themselves and are not new or additional documents but were referred to and mentioned in the plaint as well as in the affidavit in lieu of examination-in-chief of the plaintiff's witness no.1.

5. Mr.Naphade relies upon the decision of this Court in the case of *Meera w/o. Vijay Mukhedkar vs. Laxminarayan s/o. Venkobasa Damam (died) through his LRs Shriniwas s/o. Laxminarayan Damam and Others*<sup>1</sup>.

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<sup>1</sup> 2018(5) Mh.L.J. 809

6. Mr.Naphade submits that, therefore, this Court allow the application and this Court may subject the Applicant to any reasonable terms.

7. On the other hand, Mr.Garewal, learned Counsel appearing for the Defendants has submitted that under Order XI Rule 1 sub-rule (1) of the CPC, as amended by the Commercial Courts Act of 2015, the Plaintiff has to disclose every document in possession, power, control or custody which the Plaintiff intends to rely upon or refer to in the plaint including documents that support or weaken its case. Mr.Garewal submits that this disclosure must be comprehensive and complete at the time of filing the plaint. It is submitted that the Plaintiff despite referencing the additional documents in the plaint and the affidavit of examination-in-chief has failed and neglected to annex the additional documents when the Suit was filed on 19<sup>th</sup> December 2018 and even when the affidavit of examination-in-chief was filed on 5<sup>th</sup> July 2019. It is submitted that by neglecting to annex these documents the Plaintiff has violated the disclosure obligations under Order XI Rule 1 sub-rule (1) of the CPC.

8. Mr.Garewal draws this Court's attention to a brief summary of dates submitting that despite the various stages from the filing of the plaint on 19<sup>th</sup> December 2018, the filing of the affidavit of examination-in-chief of the Plaintiff's witness, marking of documents by this Court, preliminary meeting before the Court Commissioner and the date fixed for cross-examination on 8<sup>th</sup> October 2024 to 10<sup>th</sup> October 2024, the Plaintiff had multiple opportunities to rectify this but the Plaintiff chose to remain silent and then claiming sheer inadvertence after years of delay is a vague excuse, which cannot be permitted under Order XI anymore. Mr.Garewal would submit that it is clear from the aforesaid timelines that the Plaintiff has been negligent in pursuing the Commercial Suit and is not seeking to reply on sheer inadvertence to bring on record additional documents without any plausible cause and or sufficient reasons for such delay. Relying upon the decision of this Court in the case of ***Bank of Baroda vs. Gujarat Cables and Enamelled Products Private Limited***<sup>2</sup>, Mr.Garewal would submit that the said decision has clearly held that sheer inadvertence or oversight would not furnish or constitute a reasonable cause for granting leave under Rule 10 of Order XI of the CPC. Mr.Garewal submits that although the said decision refers to Order XI Rule 10 and this Court at the moment is

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<sup>2</sup> 2023(2) Mh.L.J. 345

concerned with Order XI Rule 5, the said interpretation would squarely apply to Rule 5 as well in as much as Rule 5 relates to the filing of additional documents by the Plaintiff and Rule 10 relates to filing of additional documents by the Defendants and the two Rules are similar and rather *pari materia*.

9. With respect to the decision in the case of *Meera w/o. Vijay Mukhedkar vs. Laxminarayan s/o. Venkobasa Damam (died) through his LRs Shriniwas s/o. Laxminarayan Damam and Others (supra)*, Mr.Garewal submits that the said decision is wholly inapplicable to the facts of this case as the said decision was with reference to Order VII Rule 14 of the CPC and not with reference to Order XI Rule 1 of the CPC. In support Mr.Garewal relies upon the decision of the Hon'ble Supreme Court in the case of ***Sudhir Kumar alias S. Baliyan vs. Vinay Kumar G.B.***<sup>3</sup> where it has been held that Order XI Rule 1 is applicable to the Commercial Suits by which the CPC has been amended with respect to the Suit before the Commercial Court and in view of Section 16 of the Commercial Courts Act, Order VII Rule 14(3) of the CPC shall have no application at all.

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3 (2021) 13 Supreme Court Cases 71



10. Mr.Garewal submits that as per the explanation under Order XI Rule 1(3), a declaration on oath under the sub-rule shall be contained in the Statement of Truth as set out in the Appendix. It is submitted that the declaration on oath shall be part of the plaint. The Plaintiff has to declare on oath that all documents in its/his power, possession, control or custody, pertaining to the facts and circumstances of the proceedings, initiated by him/it have been disclosed and copies thereof annexed with the plaint and that he does not have any other documents in his power, possession, control or custody. It is submitted that it is mandated by Order XI Rule 1 for the Plaintiff to disclose and produce all the documents in his power, possession control or custody, pertaining to the facts and circumstances of the proceedings. Mr.Garewal submits that the additional documents can however be permitted to be brought 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 to rely on additional documents as part of the above declaration on oath [as provided under Order XI 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 the filing of the Suit along with a declaration on oath that the Plaintiff has produced all documents in its power possession control or

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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. Mr.Garewal submits that the Plaintiff has already furnished a Statement of Truth as discussed above and that for the Plaintiff to now seek to produce the documents which were referred to in the plaint as well as in the affidavit in lieu of examination-in-chief would falsify the statement made in the Statement of Truth annexed to the plaint.

11. Mr.Garewal, therefore, submits that since the Plaintiff has not been able to establish reasonable cause for non-disclosure of the documents along with the plaint, this Court dismiss the application with costs.

12. I have heard the learned counsel and considered the rival contentions.

13. Before proceeding further it would be apposite to quote Order XI as under:

*“ORDER XI*

*DISCLOSURE, DISCOVERY AND INSPECTION OF DOCUMENTS  
IN SUITS BEFORE THE COMMERCIAL DIVISION OF A HIGH  
COURT OR A COMMERCIAL COURT*

1. Disclosure and discovery of documents.—(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, as on the date of filing the plaint, 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-examination of the defendant's witnesses, or

(ii) in answer to any case set up by the defendant subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.

(2) 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.

(3) 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.

Explanation.—A declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix.

*(4) In case of urgent filings, the plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath 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.*

*(5) 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.*

*(6) 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.*

*(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 or with its counterclaim if any, 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—*

- (i) for the crossexamination of the plaintiff's witnesses,*
- (ii) in answer to any case set up by the plaintiff subsequent to the filing of the plaint, or*
- (iii) handed over to a witness merely to refresh his memory.*

*(8) 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.*

*(9) 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, save and except for those set out in sub-rule (7)(c)(iii) 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.*

*(10) Save and except for sub-rule (7)(c)(iii), 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, save and except by leave of Court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or counterclaim.*

*(11) 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.*

*(12) Duty to disclose documents, which have come to the notice of a party, shall continue till disposal of the suit.”*

*(emphasis supplied)*

14. As observed in the decision of the Hon'ble Supreme Court in the case of *Sudhir Kumar alias S. Baliyan vs. Vinay Kumar G.B.(supra)*, it is clear that in view of Order XI Rule 1 as applicable to Commercial Suits by which the CPC has been amended with respect to Suits before the Commercial Court and in view of Section 16 of the Commercial Courts Act, Order VII Rule 14(3) of the CPC will have no application at all to Commercial Suits. Therefore, the decision of this court in the case of *Meera w/o. Vijay Mukhedkar vs. Laxminarayan s/o. Venkobasa Damam (died) through his LRs Shriniwas s/o. Laxminarayan Damam and Others (supra)* may not be applicable as the said decision has been rendered in the context of Order VII Rule 14. However it cannot be denied that although the Plaintiff is required to produce all the original documents with the plaint but that does not prevent the Court to accept original documents at any stage if reasonable cause is shown. It is well within the scope of exercise of powers of a Commercial Court to allow production if reasonable cause is established. Unless a case of serious

prejudice or miscarriage of justice being caused to the other side is made out, normally the Court is expected to entertain such request if proper explanation is put forth by the party seeking such production. The provisions of the CPC are procedural in nature and designed to facilitate justice and not to penalize or punish someone. In the case of *M/s. R.N.Jadi and Brothers and Others vs. Subhashchandra*<sup>4</sup>, the Supreme Court has observed that procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. In my view, these principles are equally applicable to the provisions of the CPC as amended by the Commercial Courts Act, no doubt keeping in mind the object of the Commercial Courts Act of early and speedy justice and the consequent strict construction of the provisions of the Commercial Courts Act as noted in the case of *Ambalal Sarabhai Enterprises Limited vs. K.S.Infraspac and Another*<sup>5</sup> by the Hon'ble Supreme Court.

15. Order XI Rule 1 of the CPC as applicable to the Commercial Suits mandates that the Plaintiff is to file a list of all documents, photocopies of all documents in its power, possession, control or custody pertaining

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<sup>4</sup> AIR 2007 SC 2571

<sup>5</sup> (2020) 12 SCC 585

to the suit along with the plaint and the procedure provided under Order XI Rule 1 is required to be followed by the Plaintiff and the Defendant when the Suit is a Commercial Suit. Nevertheless Rule 1 sub-rule 5 of Order XI while mandating 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 the plaint or within the extended period, permits the same with the leave of the Court to be granted only upon the Plaintiff establishing reasonable cause for non-disclosure. As has been observed in the case of *Bank of Baroda vs. Gujarat Cables and Enamelled Products Private Limited (supra)*, reasonableness of a cause depends upon the facts and circumstances of each case and in the facts of that case looking at the object and reasons of the Act of 2015, sheer oversight on the part of the bank in not disclosing a document along with its written statement it was held would not furnish a ground to grant leave, more so when the petitioner was a bank.

16. Having elucidated the above principles, coming to the facts of the case at hand, it is observed that the Plaintiff is seeking production of documents which are not denied by the Defendants. The Applicant is seeking leave to produce on record the following documents which



have been referred to in paragraph 3 (D) of the plaint and paragraph 11 of the affidavit of evidence dated 5<sup>th</sup> of July 2019 filed by the Plaintiff's witness Mr Rahul Gupta:

- (i) The balance sheet of Defendant no. 1 for the year ending 31<sup>st</sup> March 2014.
- (ii) The balance sheet of Defendant no.1 for the year ending 31<sup>st</sup> March 2015.
- (iii) The balance sheet of Defendant no.1 for the year ending 31<sup>st</sup> March 2016.
- (iv) The balance sheet of Defendant no.1 for the year ending 31<sup>st</sup> March 2017.
- (v) Email dated 28<sup>th</sup> November 2015 (along with attachment, if any),
- (vi) Email dated 28<sup>th</sup> January 2016 (along with attachment, if any),
- (vii) Email dated 5<sup>th</sup> February 2016 (along with attachment, if any),
- (vii) Email dated 11<sup>th</sup> February 2016 (along with attachment, if any,).

17. It has been submitted that the balance sheet of the Defendant No.1 for the year ending 31<sup>st</sup> March 2014, 31<sup>st</sup> March 2015 and 31<sup>st</sup> March 2016 clearly contain information of admission of liability/debt payable by the Defendant No.1 to the Plaintiff. It is only in the balance sheet for the year ending 31<sup>st</sup> March 2017 that the Defendant No.1 has retracted from the aforesaid admission of liability. It has been submitted that the said balance sheets constitute an important and

crucial evidence to decide the matter in controversy. As regards the emails, it is submitted that paragraph 11 of the affidavit of evidence of the Plaintiff's witness refers to emails dated 28<sup>th</sup> November 2015, 28<sup>th</sup> January 2016, 5<sup>th</sup> February 2016 and 11<sup>th</sup> February 2016 exchanged between the Plaintiff and the Defendants. It is submitted that these emails along with attachments relate to matters in controversy. These emails along with attachments demonstrate as to how the Defendants reneged from their obligation to pay the monies due and payable to the Plaintiff. It is submitted that these emails have been referred to in the affidavit of evidence of the Plaintiff's witness, however, they were not actually produced due to sheer inadvertence. Mr.Naphade has submitted that the documents sought to be produced by the Applicant are clearly referred to in the plaint and affidavit of evidence which is admitted by the Defendant no.1 but only that the said documents were not produced.

18. Relying upon the decision of this Court in the case of *Bank of Baroda vs. Gujarat Cables and Enamelled Products Private Limited (supra)* it has been submitted that sheer inadvertence or oversight cannot be considered to be a reasonable cause for granting leave under Rule 10 of Order XI of the CPC. Although Mr.Garewal has submitted

that sub-rule 10 and sub-rule 5 are similar and rather *pari materia*, it is to be noted that one rule is for the Defendant and the other is for the Plaintiff. Further, the decision in the case of *Bank of Baroda vs. Gujarat Cables and Enamelled Products Private Limited (supra)* clearly specifies in paragraph 18 that the view has been expressed in consideration of the facts stated in the said case. In the facts of that case, the cross-examination had already commenced as can be seen from paragraph 6 of the said decision. The reason for seeking to produce those documents was that the Plaintiff's had disputed the debit entries into accounts and that the Plaintiff's witness had admitted execution of various documents. The trial court in the facts of that case had declined leave and against the refusal of such leave, a writ petition came to be filed in this Court. It is while considering the decision of the trial court in the facts of that case that this Court in a writ petition under Article 227 of the Constitution of India held that sheer inadvertence or oversight would not furnish or constitute reasonable cause for granting leave under Rule 10 of Order XI of the CPC. In the facts of this case it is the Plaintiffs who are seeking to produce documents which are well within the knowledge of the Defendants having been referred to in the plaint as well as in the affidavit in lieu of examination-in-chief of the Plaintiffs, where the cross-examination is yet to commence. The facts

and circumstances are clearly distinguishable, in as much as, in the case of *Baroda vs. Gujarat Cables and Enamelled Products Private Limited (supra)* there was actual non-disclosure but in the facts of this case, it is not that the said documents were not disclosed; they were disclosed in the plaint as well as in the affidavit in lieu of examination-in-chief of the Plaintiff but through sheer inadvertence not annexed or exhibited, which facts are not denied. These facts cannot be said to be similar to the facts in the case of *Bank of Baroda vs. Gujarat Cables and Enamelled Products Private Limited (supra)* where as noted above, the documents were not even referred to in the written statement and the reason for production was that because the Plaintiff had disputed the debit entries in the two accounts and that too after the cross-examination of the Plaintiff's witness had already commenced. As noted above reasonableness of cause depends upon the facts and circumstances of each case. Therefore, the reference to sheer inadvertence in the case of *Bank of Baroda vs. Gujarat Cables and Enamelled Products Private Limited (supra)* and in this case, has to be seen in the context of the facts of each case, which clearly are different and distinguishable.

19. Moreover, it has been submitted in the rejoinder in paragraph 7 by the Plaintiff and which is not disputed by the defendants that the plaint in the summary suit filed in respect of an admitted liability seen from the balance sheet of the Defendant No. 1 has been signed and verified by the Plaintiff's witness i.e. Mr. Rahul Gupta (director of Plaintiff) who has been in Dubai since the year 2013. The affidavit of evidence is also filed by Mr. Gupta. Mr. Gupta has been in Dubai since 2013 for business and he ordinarily resides in Dubai whereas the Advocates of the Plaintiff are in Mumbai and due to this there was some lack of co-ordination. As a result the documents although referred to in the plaint and in the affidavit of evidence were not annexed. The Defendants have not disputed this reasoning. This, therefore, is not only a case of sheer inadvertence with reference to the facts of this case clearly distinguishable from those in the case of *Bank of Baroda vs. Gujarat Cables and Enamelled Products Private Limited (supra)* but also a case of lack of co-ordination between the Plaintiff's director and its lawyers. I, therefore, agree with Mr. Naphade that this is not a case of sheer inadvertence but a case of lack of co-ordination. In my view this is reasonable and sufficient cause for non-production. In the facts of this case the Plaintiff has established reasonable and plausible cause for not annexing the documents with the plaint or the affidavit of

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evidence. These documents would no doubt be necessary for determining the real controversy in the matter. Even the Defendants in their reply have referred these documents as crucial documents. The Defendants would also get an opportunity to cross-examine the Plaintiff on these documents.

20. In view of the provisions of Order XI Rule (1)(5) and in view of the above discussion, the arguments on behalf of the Defendants with respect to the Statement of Truth would not be tenable and the question of falsification of Statement of Truth would not arise.

21. It, however, cannot be denied that the said documents had not been annexed to the plaint or to the affidavit of evidence and although no prejudice would be caused to the Defendants if the documents are allowed to be produced as the said documents are in the knowledge of the Defendant as well having been referred to in the plaint and the affidavit of evidence, however, any lack of coordination between the Plaintiff's director and the lawyers cannot be ignored. Mr.Naphade has submitted that this Court while considering the application for production of the subject documents may subject the Plaintiff to any terms. I, therefore, propose to balance this aspect by imposing costs of

₹ 50,000 upon the Plaintiff to be deposited with the High Court Employees Medical Welfare Fund at Mumbai within a period of two weeks.

22. Accordingly subject to payment of the costs as above within a period of two weeks, the application is allowed in terms of prayer clause (a) and (b) which read thus:

*“(a) That this Hon'ble Court be pleased to grant leave to the Applicant to produce on record the following documents :*

*(i) The balance sheet of Defendant no. 1 for the year ending 31<sup>st</sup> March 2014.*

*(ii) The balance sheet of Defendant no.1 for the year ending 31<sup>st</sup> March 2015.*

*(iii) The balance sheet of Defendant no.1 for the year ending 31<sup>st</sup> March 2016.*

*(iv) The balance sheet of Defendant no.1 for the year ending 31<sup>st</sup> March 2017.*

*(v) Email dated 28<sup>th</sup> November 2015 (along with attachment, if any),*

*(vi) Email dated 28<sup>th</sup> January 2016 (along with attachment, if any,)*

*(vii) Email dated 5<sup>th</sup> February 2016 (along with attachment, if any,)*

*(vii) Email dated 11<sup>th</sup> February 2016 (along with attachment, if any,).*

*(b) That this Hon'ble Court be pleased to permit the Applicant to file a further affidavit in lieu of examination-in-chief or permit the Applicant's Advocates to conduct further examination-in-chief to admit in evidence the documents sought to be produced through this application."*

23. The Interim Application accordingly stands allowed and disposed as above.

**(ABHAY AHUJA, J.)**