

IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

Misc. Petition No.4477 of 2022

M/S TRUST INTERNATIONAL THAROUGH ITS PROPRIETOR SHRI ANIL

KHANNA

Vs

M/S KRISHNA ENTERPRISES THROUGH ITS PROPRIETOR SHARAD

AGRAWAL & OTHERS

APPERANCE

Shri Nikhil Rai - Advocate for the petitioner.

Shri Pallav Awasthi - Advocate for respondent No.2.

Reserved on : **20/01/2025**

Delivered on : **30/1/2025**

*This petition having been heard and reserved for orders, coming on for pronouncement this day, the **Hon'ble Shri Justice Milind Ramesh Phadke** pronounced/passed the following:*

ORDER

The present petition, under Article 227 of the Constitution of India, has been filed by the petitioner against the order dated 22.08.2022 passed by Court of Commercial Court and Commercial Appellate Court, District Gwalior in Case No.98 of 2020; whereby, by invoking the provisions of Order 11 Rule 21 of CPC, dissatisfied with the affidavits filed by petitioner/defendant No.3 in respect of production of the original copies of the document dated 20.11.2013 had struck out his right of defence.

FACTS

2. Short facts of the case are that plaintiff/respondent No.1 had filed a suit for declaration and permanent injunction against defendant No.2 to 4 as well as the present petitioner. The present petitioner/defendant No.3 had filed his written statement and had denied the averments in the plaint. Alongwith the plaint, respondent No.1/plaintiff had filed an application under Order 39 Rule 1 & 2 CPC, but the same was not decided and during the pendency of the suit, defendant No.2/respondent No.2 had filed an application under Order 11 Rule 14 of CPC wherein it was prayed that defendant No.3 be directed to produce the original copy of letter dated 20.11.2013 alongwith affidavit. Vide order dated 13.11.2019 learned Trial Court allowed the said application and further directed the petitioner/defendant No.3 to produce the original copy of letter dated 20.11.2013 on affidavit. In compliance of the said order dated 13.11.2019, the petitioner's authorized signatory, namely, Gautam Khanna, S/o Anil Khanna, had filed an affidavit and alongwith the affidavit, certain documents were filed which reflected the fact that all the conversation made between the defendants No.1 and 3 were through the email and in said letter, the possession of the said letter was denied.

3. On 17.07.2022, learned Trial Court, after considering the affidavit held that in the affidavit, no particulars had been given in relation to the letter dated 20.11.2013, therefore, once again directed the petitioner/defendant No.3 to file an affidavit in compliance of order dated 13.11.2019. The petitioner had again filed an affidavit in which it was categorically stated that on 23.07.2013, the deponent vide his Official email address 'trust_international@ymail.com' had sent an email to defendant No.1 on his Official email address i.e. and

media_international@yahoo.co.in wherein the deponent had specifically stated that except 07 films mentioned in the email, all rights pertaining to the remaining films are not with the defendant No.3, to which, the deponents asked the defendant No.1 to send all the link agreements and NOC by 25.07.2013. In the said affidavit, it was also stated that in continuation of the said email, deponent's son Gautam Khanna went to meet defendant No.1 at his Office located at 1596, 2nd Floor, Deewan Hall Street, Bhagirath Palace, Chandni Chowk, Delhi, where he met one Suraj Sabharwal an authorized representative of Prem Kaushal and gave a photocopy of the letter dated 20.11.2013 and though had shown the original letter for reference and assured that the original letter will be given alongwith other original documents after formalities which though was never given despite several requests.

4. Learned Trial Court, being dissatisfied with the averments made in the affidavit vide the impugned order dated 22.08.2022, suo-motu invoked the provisions of Order 11 Rule 21 of CPC and struck off the defence of the petitioner. Aggrieved by the aforesaid, the present petition has been filed.

ARGUMENTS

5. The argument which has been raised on behalf of the petitioner is that the provisions of Order 11 Rule 21 CPC are not applicable to the Commercial Courts and Tribunals, as per the State Amendment of 2016 vide Order 11 Rule 5(4) of CPC, the Commercial Court has powers only to draw adverse inference on being dissatisfied with the averments made by any party for non-production of the documents required to be produced, no more no less and when only an adverse inference could have been drawn for non-production of the document striking off

defence was impermissible, thus the impugned order was bad in law.

6. It was further submitted that when in specific terms, the possession of letter dated 20.11.2013 was denied and was averred that the original of the said letter was never given to the petitioner/defendant No.3 and as such statement was made on oath, the Court should have accepted the said contention and should had closed the application under Order 11 Rule 14 of CPC and should not had passed any order invoking the provisions under Order 11 Rule 21 of CPC. It was thus submitted that the impugned order since suffers from patent illegality and perversity deserves to set aside.

7. On the other hand, learned counsel for the respondent No.2 while supporting the impugned order herein has submitted that since the compliance of the directions as issued by the learned Trial Court while invoking the provisions of Order 11 Rule 14 of CPC was not complied with by the petitioner/defendant No.3 and the original copy of the letter dated 20.11.2013 was not filed before it, the powers exercised under Order 11 Rule 21 of CPC was rightly exercised and the defence of the petitioner/defendant No.3 was rightly struck off. It was thus submitted that as the impugned suffers from no infirmity, therefore, the present petition being devoid of merit is liable to be dismissed.

8. Heard counsel for the parties and perused the record.

DISCUSSION AND CONCLUSION

9. Order 11 Rule 14 of CPC provides that it shall be lawful for the Court, at any time during the pendency of any suit, to order production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such

documents, when produced, in such manner as shall appear just. The word used in Rule 14 of CPC is "production of such documents in possession or power of a party."

10. Thus, the possession or power of a document is *sine qua non* for issuing any direction and when a party on oath has specifically denied the possession of the original document, then, the Court cannot carry on insisting the party to bring or place the said document on record.

11. The first and foremost argument which has been raised on behalf of the petitioner is that the provisions of Order 11 Rule 21 of CPC are not applicable to the Commercial Courts, appears to be baseless and misconceived as the provisions of Order 11 Rule 5(4) of CPC, the said amendment as relied only confers that in case, sufficient reasons are not afforded for non-production of the document as directed, adverse inference can be drawn which doesn't imply that further powers as provided under the order cannot be exercised by the Commercial Court & Commercial Appellate Court, hence, it is hereby discarded.

12. In the affidavit filed on behalf of the petitioner/defendant No.3, it is specifically observed that though photocopy of the letter dated 20.11.2013 was shown to the son of the petitione/defendant No.3, but the original letter was never given to him despite several requests and was assured that the said letter will be supplied later on with the original document. When the very factum of possession of the original document dated 20.11.2013 was denied by the petitioner/defendant No.3, the natural corollary for the learned Trial Court would have been to proceed further and no order under Order 11 Rule 21 of CPC was required to be passed, as there was no non-compliance of its order.

13. In this regard, the provisions of Order 11 Rule 21 of CPC was

also required to be seen wherein it is provided that if a defendant fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, his defence can be struck off and when there is no non-compliance, the said order was unwarranted; thus, the impugned order cannot withstand the wrath of judicial scrutiny and is therefore, liable to be set aside. Accordingly, it is hereby set aside.

14. As a result, the present petition is **allowed** and **disposed of**.

(Milind Ramesh Phadke)
Judge