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

+ **CS(COMM) 1680/2016**

VIFOR (INTERNATIONAL) LTD

..... Plaintiff

Through: Mr. Pravin Anand, Ms. Vaishali
Mittal and Mr. Rohin Kootwal, Advs.

Versus

SUVEN LIFE SCIENCES LTD.

..... Defendant

Through: Ms. Rajeshwari H., Mr. Tahir A.J. and
Ms. Saif Rahman Ansari, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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11.03.2019

IA No.3552/2019 (of plaintiff u/O XI R-1 CPC for filing additional documents)

1. Though the Legislature, by enacting the Commercial Courts Act, 2015, intended expeditious disposal of suits which qualify as a commercial suits thereunder, but it is found that in most of the commercial suits, applications as this, for delayed filing of documents or for condonation of delay in taking requisite steps in such suits, are being filed and which were envisaged by the Commercial Courts Act when fixing the timelines for disposal of such cases, to be an exception rather than norm.

2. The effort to expedite, endeavoured by the Commercial Courts Act, cannot be only by the Courts, as appears to be understood, but must be by all the stakeholders i.e. litigants as well as the counsels. They are required to pay extra attention to, (a) making precise / concise pleadings spelling out basis of claim or defence and to avoid making unnecessary pleas, which add

to length of pleadings and ultimately lead to unnecessary issues being framed, evidence being led, which has no relevance at the time of final adjudication; (b) documents they are required to file in support of their claim or defence and/or to disprove the claim / defence of other, specially at the time of filing pleadings, to avoid filing of applications as these; (c) at the outset only, prepare a entire blue print of their case / defence, including of witnesses to be examined, by studying the law and judgments on the subject controversy, including the arguments to be ultimately addressed; it is often found that the parties / counsels themselves, owing to lack of attention / such strategy, understand their own claim / defence, as the litigation unfolds, instead of before penning their respective pleadings; the same leads to a plethora of applications being filed, to make up the lacunas/deficiencies in their own case/defence, learnt during the course of trial, adding to the length of time for adjudication; (d) the stage of framing of issues, with omnibus issues with respect to reliefs claimed being proposed and vagueness whereof permits all kinds of evidence being led; the issues are expected to guide the trial, with all knowing precisely what is required to be proved and on non-proof whereof consequences shall follow. It is also found that whenever applications are filed, the opposite party / counsel, out of habit, while appearing on advance notice, seek time for filing reply. Most of such interim applications need no reply. Moreover, the law on various aspects which come up for consideration in such interim applications, is by and large settled and any counsel worth his salt knows the outcome of such applications. In such situations, no time should be permitted to be wasted on such applications and if the counsel knows that the application, even after reply and arguments would be allowed, should consent thereto. Else, the

Commercial Courts Act, insofar as aimed at expediting disposal, will remain a piece of legislation only on paper.

3. There is thus an imminent need for change in attitude and will for expeditious disposal.

4. The counsel for the defendant appears on advance notice and states that no reply is required to be filed and the application can be heard today itself.

5. Though the counsel for the plaintiff commenced arguments contending that the counsel for the defendant has agreed to the filing of the documents but the counsel for the defendant controverts. The counsels have been heard.

6. The documents, which the plaintiff seeks to file belatedly, are listed at Serial Nos.1 to 16 in paragraph 7 of the application. The reference to documents hereinafter is by reference to the said serial numbers in paragraph 7 of the application.

7. As far as the documents at Serial Nos.1,5&11 are concerned, the documents at Serial Nos.1&11 are the Curriculum Vitae of the two expert witnesses sought to be examined by the plaintiff and particulars in which regard could have been given by the witnesses in their affidavits by way of examination-in-chief also and it is expedient that instead of adding to the length of the examination-in-chief, the said particulars be given by way of a separate document. The same are part of recording of evidence and the defendant can have no objection to the same. The same is the position of the document at Serial No.5, which is an authorisation letter of the plaintiff in favour of the PW-2 and which also could not have been in existence at the stage of filing of documents, though the plaintiff, if not earlier, at least on

filing of written statement, ought to have known that to prove its case it will be required to examine experts and ought to have zeroed down on the experts at the stage of filing replication. The counsel for the defendant thus cannot have any objection to the documents at Serial No.5 also.

8. The counsel for the defendant confirms so.

9. The counsel for the plaintiff does not press for filing of document at Serial No.2.

10. With respect to documents at Serial Nos.3 & 12 to 16, the counsel for plaintiff states that the same, by their nature can be handed over even during the course of final arguments and thus need not be filed and/or permission therefor obtained and reserving the said right, does not press for filing of the documents at Serial Nos.3 & 12 to 16.

11. With the said clarification and with further clarification that it will be open to the defendant to oppose that the said documents can be so handed over, the documents at Serial Nos.3 & 12 to 16 are also not required to be considered.

12. As far as the document at Serial No.4 is concerned, the counsel for the plaintiff agrees that there is no issue on which the said document is required to be filed and thus does not press for filing of the document at Serial No.4 also.

13. That leaves the documents at Serial Nos.6 to 9, which are the copies of opinion of experts on foreign law and which are sought to be filed along with the affidavit by way of examination-in-chief of PW-2.

14. I have enquired from the counsel for the plaintiff, how PW-2 can prove opinion of other experts, without the said experts being themselves examined in evidence.

15. The counsel for the plaintiff states that PW-2 is intended to be examined with respect to United Kingdom Law and does not press the documents at Serial Nos.6 to 9 also.

16. As far as the documents at Serial No.10 are concerned, the said documents are admittedly of the years 2013 & 2015 and though no reason has been given in the application for late filing thereof but the counsel for the plaintiff states that reserving the right to confront the witness of the defendants with the said documents, he does not press the application for the said documents at Serial No.10 also.

17. Thus, only the documents at Serial Nos.1,5&11 are permitted to be taken on record.

18. The application is disposed of.

RAJIV SAHAI ENDLAW, J.

MARCH 11, 2019

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