



2022:CHC-OS:6105

**IN THE HIGH COURT AT CALCUTTA
(ORIGINAL SIDE)
COMMERCIAL DIVISION**

Present:

The Hon'ble Justice Krishna Rao

G.A. (Com) No. 7 of 2024

In

C.S. (Com) No. 739 of 2024

(Old No. C.S. 25 of 2014)

Soneko Marketing (P) Ltd.

Versus

Rashmi Metaliks Limited

Mr. Sarosij Dasgupta

Mr. Biswaroop Mukherjee

Ms. Saheli Bose

... For the plaintiff.

Mr. Subhankar Nag

Mr. Avishek Guha

Mr. Chayan Gupta

Mr. Ankush Majumdar

Mr. Subhajit Das

... For the defendant.



Hearing Concluded On : 08.08.2025

Judgment on : 02.09.2025

Krishna Rao, J.:

1. The defendant has filed the present application being G.A. (Com) No. 7 of 2024 praying for amendment in the written statement.
2. Initially the suit filed by the plaintiff proceeded ex-parte against the defendant and an ex-parte decree was passed. The defendant has filed an application for recalling of the ex-parte decree but the same was dismissed. Being aggrieved with the order of dismissal, the defendant had preferred an appeal. The Appellate Court allowed the appeal by an order dated 4th July, 2023 by extending time to file written statement by three weeks from date of the order and subject to payment of costs of Rs. 2 lakhs and furnishing a cash security of Rs. 50 lakhs to the Registrar of Original Side of this Court. The Appellate Court also directed the defendant to comply with the requirement of Section 15(3) of the Commercial Courts Act, 2015 within two weeks from date of the order.
3. In compliance of the order dated 4th July, 2023, the defendant prays for an order for acceptance of the written statement but the Learned Counsel for the plaintiff raised objection on the ground that the Appellate Court allowed the defendant to file written statement which was affirmed on 12th December, 2017 but the defendant tried to file a fresh written statement. This Court finds that the fresh written



statement which was affirmed on 24th July, 2023, is totally different from the written statement affirmed on 12th December, 2017 and accordingly, this Court has not accepted the fresh written statement affirmed on 24th July, 2023 but the defendant was given liberty to file written statement affirmed on 12th December, 2017.

4. The defendant has preferred an application in a disposed appeal before the Appellate Court for clarification of the order dated 4th July, 2023 but the Appellate Court do not find any reasons to clarify the order dated 4th July, 2023 but the Appellate Court given liberty to the defendant to pray for amendment of written statement in accordance with law. Now, the defendant has filed the present application seeking amendment in the written statement.
5. Mr. Subhankar Nag, Learned Advocate representing the defendant submits that the written statement which was affirmed earlier was never filed before this Court and only after the liberty granted by the Appellate Court, the defendant has filed written statement affirmed on 12th December, 2017. He submits that the said written statement did not have any annexures and has also not accompanied with any statement of truth as mandated under the Commercial Courts Act, 2015.
6. Mr. Nag submits that in the written statement affirmed on 12th December, 2017, certain relevant pleadings have not been made which are necessary for proper adjudication of the suit. He submits that the



plaintiff has filed the suit in the year 2014 before the Ordinary Original Civil Jurisdiction and at that point of time the Commercial Courts Act was not promulgated. After the enactment of Commercial Courts Act and after establishment of Commercial Court in the High Court at Calcutta, the suit filed by the plaintiff is transferred to the Commercial Court. He submits that as per Commercial Courts Act, statement of truth, list of documents, affidavit of documents also needs to be filed along with written statement.

7. Mr. Nag submits that the amendment as sought for by the defendant will not change the nature of the defense made in the written statement and the amendment sought for by the defendant are explanatory in nature and if the amendment as sought for by the defendant is not allowed, the defendant will suffer irreparable loss and injury. In support of his submission, he has relied upon the judgment in the case of **Sushil Kumar Jain Vs. Manoj Kumar** reported in **(2009) 14 SCC 38**.
8. Mr. Nag submits that the amendment as sought for are consequential in nature and do not change the nature and character of suit. He submits that such amendments can be allowed at any stage of the suit before the trial has commenced. He relied upon the judgment in the case of **Suman Kumar Vs. Chhathi Lal Rai** reported in **2018 SCC OnLine Pat 1834**.



9. Mr. Nag submits that standards of allowing an application for amendment of written statement is much lower than that of plaint. He has relied upon the judgment in the case of ***Usha Balasaheb Swami and Others Vs. Kiran Appaso Swami & Ors.*** reported in **(2007) 5 SCC 602**. He further submits that it is a trite law that correctness of merits of amendments cannot be gone into while considering an amendment application. He relied upon the judgment in the case of ***Rajesh Kumar Aggarwal Vs. K.K. Modi*** reported in **(2006) 4 SCC 385**.
10. Mr. Sarosij Dasgupta, Learned Advocate representing the plaintiff submits that initially this Court passed an order on 4th December, 2018 against which the defendant preferred an appeal and the said appeal was duly contested by the plaintiff. By an order dated 25th February, 2019, the Appellate Court disposed of the appeal by giving liberty to the defendant to file written statement within three weeks. The Appellate Court also held that the suit shall not be tried as a summary suit and department is directed to renumber the suit as commercial suit. He submits that inspite of leave granted by the Appellate Court, the defendant has not filed written statement though the defendant had the knowledge that the suit is to be treated as Commercial Suit in terms of the order passed by the Appellate Court.
11. Mr. Dasgupta submits that on the basis of the statement made before the Appellate Court that the written statement is ready and already affirmed in the year 2017, the Appellate Court has allowed the



defendant to file the said written statement but instead of filing the written statement affirmed in the year 2017, the defendant tried to file a fresh written statement but this Court has not allowed the same and now only to cause delay in the matter, the defendant has filed the present application for amendment of written statement without any explanation as to why in the original written statement, the defendant has not made such statements and why the defendant has not disclosed documents along with written statement.

12. Mr. Dasgupta submits that the defendant is trying to bring new documents on record which the defendant has not disclosed with the written statement. He submits that the as per the Commercial Courts Act, 2015, there is bar to bring additional documents on record which were not disclosed with the written statement at the time of filing of written statement and the documents were in possession and custody of the defendant. He relied upon the judgment in the case of **Great Gatsby Vs. Mahesh Prefab** reported in **2022 SCC OnLine Del 2099** and **Sudhir Kumar Vs. Vinay Kumar G.B.** reported in **(2021) 13 SCC 71**.

13. Mr. Dasgupta submits that any liberty granted by the Court is subject to judicial scrutiny and maintainability, and the same is not a matter of right. He submits that the plaintiff is not shorn of its right to set up its defence to the application for amendment of written statement, as any liberty granted by this Court to raise necessary defences to the invocation of the purported remedy by the defendant. In support of his



submissions, he has relied upon the judgment in the case of **Asgar & Ors. Vs. Mohan Verma & Ors.** reported in **(2020) 16 SCC 230**.

14. Mr. Dasgupta submits that amendment of a written statement cannot be permitted to deprive the plaintiff to a valuable right which has accrued in favour of the plaintiff. He has relied upon the judgment in the case of **M/s. Modi Spinning & Weaving Mills Vs. Ladha Ram & Co.** reported in **(1976) 4 SCC 320** and in the case of **Gautam Sarup Vs. Leela Jetly** reported in **(2008) 7 SCC 85**.

15. The defendant by way of amendment intending to incorporate some facts as well as to bring documents on records as annexures of the written statement. The plaintiff has filed the present suit as summary suit under Order 37 of the Code of Civil Procedure, 1908. In an appeal preferred by the defendant being APO No. 39 of 2019, the Hon'ble Appellate Court passed the following order on 25th February, 2019 which reads as follows:

“Sufficient cause being shown for not being able to file the appeal within the statutory period, the delay in preferring the appeal is condoned.

This appeal is arising out of an order dated 4th December, 2018. A summary suit was filed after the winding up proceeding. In the order disposing of the winding up petition, there failed. are sufficient indications that the matter involves triable issues. Leave was given to the plaintiff to take appropriate steps in accordance with law. The plaintiff filed a summary suit. Although the plaintiff described the suit as a suit filed under Order 37 of the Code of Civil Procedure, but it appears that the summons was not served in accordance with Form No. 4 in Appendix-B as prescribed under Order 37 Rule 2 Sub Rule (2) of the Code of Civil Procedure.



In view of the aforesaid, no presumption under Order 37 Rule 2 Sub Rule (3) of the Code of Civil Procedure would arise. The defendant however filed an application for leave to enter appearance in the suit on the basis of the summons served upon him. In fact, there was no requirement as such for the defendant to apply for entering appearance in the suit having regard to the fact that the summons that was served was not in accordance with Form No. 4 in Appendix-B of the Code of Civil Procedure. The provisions of Order 37 of the Code of Civil Procedure have to be strictly construed. Apart from the aforesaid fact, even on merits, having regard to the order passed by Hon'ble Justice Sanjib Banerjee on 4th February 2013 which however subsequently stood modified by the Hon'ble Division Bench on 19th July 2013, it appears that the question of limitation would remain a vexed issue to be decided at the trial of the suit.

The learned counsel for the plaintiff-respondent has prayed for expeditious disposal of the suit.

The appellant-defendant shall file written statement within three weeks from date. discovery of documents an There shall be to be order for cross two weeks The completed within thereafter, and inspection shall be offered forthwith. plaintiff shall prepare a comprehensive Judge's Brief of Documents within two weeks thereafter and supply a copy thereof upon the advocate-on-record thereafter on summary suit. usual of the appellant-defendant within a week terms. The suit shall not be tried as a summary suit. The department is directed to renumber the suit as a commercial suit. The aforesaid directions are peremptory.

It is made clear that we have not expressed any opinion with regard to the question of limitation urged by the appellant in this proceeding and it is for the Trial Court to decide the issue of limitation if such issue is framed.

The impugned order is set aside.

APO No. 39 of 2019, GA No. 470 of 2019 and GA No. 471 of 2019 stand disposed of.”



16. In the said order, a specific direction was passed upon the defendant to file written statement within three weeks from date. It is further directed for cross-discovery of documents to be completed within two weeks thereafter, and inspection shall also to be offered forthwith. As per direction of the Appellate Court, the suit is renumbered as Commercial Suit. After the order of the Appellate Court, the defendant has not taken any steps either by filing written statement or completing discovery and inspection of the documents. The suit was proceeded undefended against the defendant and ex-parte decree was passed on 16th August, 2022.

17. Though the defendant has filed an application for recalling the ex-parte decree but this Court rejected the application filed by the defendant. The defendant preferred an appeal and in the said appeal, the Appellate Court passed the following order on 4th July, 2023:

“The facts emerging from the pleadings and the record of the Court is that the Co-ordinate Bench presided over by one of us (Soumen Sen, J.) by an order dated 25th February, 2019 directed that suit to be re-numbered as a commercial suit and the appellant/defendant was directed to file written statement within three weeks from that date. On and from 25th February, 2019, the suit can only be heard by the learned Single Judge having the determination that is to say to try the suit as a commercial suit. A separate list of commercial suit is required to be published and the suit is required to be heard following the procedure under the Commercial Courts Act, 2015. Once a suit is directed to be heard as a commercial suit, the procedure prescribed under the Commercial Courts Act, 2015 is required to be followed. It involves filing of a statement of truth, discovery and inspection within the stipulated time and in the manner as prescribed under the relevant rules.



It is not in dispute that consequent upon the suit being transferred as commercial suit it was not heard as a commercial suit following the prescribed procedure under the Commercial Courts Act, 2015. The learned Single Judge has proceeded to hear the suit as an ordinary suit and not as a commercial suit. Although on the date fixed the Court was wearing two hats the procedures are different and distinct. Admittedly, consequent upon the suit being transferred to a Commercial Division, statement of truth and other formalities were not complied with. The suit was not ready to be heard as a commercial suit in that regard.

However, at the same time, it cannot be ignored that the defendant/appellant ought to have filed the written statement in the department and the advocate-on-record could not have waited for a reply furnishing the renumbering of the suit, after it was transferred as a commercial suit. The lack of knowledge, we presume, with regard to the relevant rules is manifest from the conduct of the advocate-on-record of the appellant.

It was also the duty of the advocate-on-record to keep a watch on the list and to approach the Commercial Court with a prayer for acceptance of the written statement as the time to file the written statement would expire and the consequence of non-filing could be fatal. The matter could have been brought to the notice of the Commercial Court disclosing the difficulty. The plaintiff was benefited by such lack of diligence and had proceeded with the suit ex parte in the ordinary original civil jurisdiction of this Court.

In view of the fact that the suit was heard as an ordinary original civil suit and not as a commercial suit following the procedure prescribed under the Commercial Courts Act, 2015 and the written statement was prepared within the period stipulated by the Hon'ble Division Bench, we think that an opportunity ought to have been given to the defendant by the learned Single Judge on such terms and conditions as may be deemed fit and proper having regard to the conduct of the appellant.



Taking into consideration the aforesaid factors, the time to file written statement is extended by three weeks from date, subject to payment of costs assessed at Rs.2 lakhs to the plaintiff and furnishing a cash security of Rs.50 lakhs to the Registrar, Original Side of this Court. The department shall not accept the written statement unless the aforesaid two conditions are fulfilled. In default of complying with either of the aforesaid conditions, the decree shall automatically revive without any further reference to this Court. The appellant shall comply with the requirement of Section 15(3) of the Commercial Courts Act, 2015 within two weeks from date.

In the event the cash security is furnished with the Registrar, Original Side of this Court, the same shall be invested in a short-term fixed deposit account yielding highest return and shall be kept renewed from time to time till the disposal of the suit.

Upon filing the written statement, the parties are directed to comply with the procedural matters as mentioned in the Commercial Courts Act, 2015. Liberty to mention for early disposal of the suit after the suit is ready for hearing.”

- 18.** The defendant has filed written statement which was affirmed on 12th December, 2017. In the proposed amendment, the defendant intending to incorporate the point of limitation, suppression of facts, SGS report which were seized by the Central Bureau of Investigation, plea that the plaintiff has supplied deficient quality of materials which were not in accordance with the specification and the copy of application and affidavit-in-opposition in connection with Company Petition No. 310 of 2012.
- 19.** In the case of **Sushil Kumar Jain Vs. Manoj Kumar & Anr.** reported in **(2009) 14 SCC 38**, the Hon'ble Supreme Court held that:



“12. In our view, having considered the averments made in the application for amendment of the written statement, it cannot be said that in fact neither any admission was made by the appellant in his original written statement nor had the appellant sought to withdraw such admission made by him in his written statement. That apart, after a careful reading of the application for amendment of the written statement, we are of the view that the appellant seeks to only elaborate and clarify the earlier inadvertence and confusion made in his written statement. Even assuming that there was admission made by the appellant in his original written statement, then also, such admission can be explained by amendment of his written statement even by taking inconsistent pleas or substituting or altering his defence.

15. Keeping these principles in mind, let us now take up the question raised before by the learned counsel for the parties. As stated herein earlier, the admission made by a defendant in his written statement can be explained by filing the application for amendment of the same. This principle has been settled by this Court in Panchdeo Narain Srivastava v. Jyoti Sahay, while considering this issue, held that the admission made by a party may be withdrawn or may be explained. It was observed in para 3 of the said decision as follows:

“3. ... An admission made by a party may be withdrawn or may be explained away. Therefore, it cannot be said that by amendment an admission of fact cannot be withdrawn.”

20. In the case of **Usha Balashaheb Swami and Others Vs. Kiran**

Appaso Swami & Ors. reported in **(2007) 5 SCC 602**, the Hon’ble

Supreme Court held that:

“19. It is equally well settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or



the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.

20. *Such being the settled law, we must hold that in the case of amendment of a written statement, the courts are more liberal in allowing an amendment than that of a plaint as the question of prejudice would be far less in the former than in the latter case [see B.K. Narayana Pillai v. Parameswaran Pillai and Baldev Singh & Ors. v. Manohar Singh]. Even the decision relied on by the plaintiff in Modi Spinning (supra) clearly recognises that inconsistent pleas can be taken in the pleadings. In this context, we may also refer to the decision of this Court in Basavan Jaggu Dhobi v. Sukhnandan Ramdas Chaudhary (Dead) [1995 Supp (3) SCC 179]. In that case, the defendant had initially taken up the stand that he was a joint tenant along with others. Subsequently, he submitted that he was a licensee for monetary consideration who was deemed to be a tenant as per the provisions of Section 15A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. This Court held that the defendant could have validly taken such an inconsistent defence. While allowing the amendment of the written statement, this Court observed in Basavan Jaggu Dhobi's case (supra) as follows :-*

"As regards the first contention, we are afraid that the courts below have gone wrong in holding that it is not open to the defendant to amend his statement under Order 6 Rule 17 CPC by taking a contrary stand than was stated originally in the written statement. This is opposed to the settled law open to a defendant to take even contrary stands or contradictory stands, the cause of action is not in any manner affected. That will apply only to a case of the plaint being amended so as to introduce a new cause of action."



- 21.** As regard to the point of limitation in an appeal preferred by the defendant being APO No. 39 of 2019, the defendant has raised the point of limitation and the Appellate Court kept the point of limitation open for trial if such issue is raised.
- 22.** As regard to the pleadings of suppression of fact, this Court finds that the defendant intending to bring the fact of suppression on record by way of amendment. Incorporating the ground of suppression of fact is neither explanation of any admission made by the defendant nor the defendant has disclosed in the written statement what are the material facts suppressed by the plaintiff. This Court also did not find any bona fide on the part of the defendant to incorporate the said plea raised in the proposed amendment.
- 23.** The defendant has taken the plea in the proposed amendment that the materials supplied/delivered by the plaintiff were of deficient quality and were not as per the specifications of the goods required by the defendant. The defendant in support of his case relied upon the Debit Note dated 31st March, 2008.
- 24.** The defendant intends to bring documents on record in support of his plea raised in the proposed amendment. The defendant intending to bring the seizure list in connection of RC. Case No. 02 of 2002 of the Central Bureau of Investigation wherein the CBI seized the SGS report and the copy of the letter wherein the defendant requested the SGS India Private Limited to provide copy of the report. The defendant also



intending to bring on record the copy of Company Petition and affidavit filed therein.

25. Under the Commercial Courts Act, 2015, Order XI of the Code of Civil Procedure, 1908, is amended. Order XI, Rules 6 to 11 reads as follows:

“(6) The plaintiff 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 cross-examination 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."*

26. In the case of **Sudhir Kumar Alias S. Baliyan Vs. Vinay Kumar G.B.**

reported in **(2021) 13 SCC 71**, the Hon'ble Supreme Court held that:

"9.5. *Order 11 Rule 1(5) further provides 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 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. Therefore on combined reading of Order 11 Rule 1(4) read with Order 11 Rule 1(5), it emerges that (i) in case of urgent filings the plaintiff may seek leave to rely on additional documents; (ii) within thirty days of filing of the suit; (iii) making out a reasonable cause for non-disclosure along with plaint.

9.6. *Therefore a further thirty days' time is provided to the plaintiff to place on record or file such additional documents in court and a declaration on oath is required to be filed by the plaintiff as was required as per Order 11 Rule 1(3) if for any reasonable cause for non-disclosure along with the plaint, the documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint. Therefore, the plaintiff has to satisfy and establish a reasonable cause for non-disclosure along with plaint. However, at the same time, the requirement of establishing the reasonable cause for non-disclosure of the documents along with the plaint shall not be applicable if it is averred and it is the case of the plaintiff that those documents have been found subsequently and in fact were not in the plaintiff's power, possession, control or custody at the time when the plaint was filed. Therefore Order 11 Rule 1(4) and Order 11 Rule 1(5) applicable to the commercial suit shall be applicable only with respect to the documents which were in plaintiff's power, possession, control or custody and not disclosed along with plaint. Therefore, the rigour of establishing the reasonable cause in non-disclosure along with plaint may not arise in the case where the additional documents sought to be produced/relied upon are discovered subsequent to the filing of the plaint."*

27. Order XI Rules 6 to 11 are with regard to the documents relied by the defendant in the written statement or in the counterclaim. In the present case the defendant has not disclosed documents in the written



statement. Now the defendant intending to amend written statement and also to disclose documents.

28. The plaintiff has initially filed summary suit under Order XXXVII of the Code of Civil Procedure, 1908. By an order dated 25th February, 2019, the Appellate Court has converted the suit filed by the plaintiff as Commercial Suit. Though the Appellate Court by the said order granted three weeks' time to the defendant to file written statement but the defendant has not filed the same. Subsequently, by an order dated 4th July, 2023, the Appellate Court has further extended time to file written statement by three weeks subject to certain conditions. In the order dated 4th July, 2023, the Appellate Court held that the defendant prepared written statement within the stipulated period fixed by the Hon'ble Division Bench and directed this Court that an opportunity should be given to the defendant on such terms and conditions as may be deem fit and proper.

29. In terms of the order of the Hon'ble Appellate Court, the defendant has filed written statement which was affirmed on 12th December, 2017. This Court finds that the said written statement was affirmed prior to the order dated 25th February, 2019. The written statement was affirmed with the cause title of Ordinary Original Civil Jurisdiction and not in the Commercial Division. By an order dated 25th February, 2019, the Appellate Court converted the suit as Commercial Suit. By the order dated 4th July, 2023, the Appellate Court also directed the



defendant to comply with the requirement of Section 15(3) of the Commercial Courts Act, 2015.

30. This Court finds that the defendant has affirmed the written statement on 12th December, 2017 which is accepted by this Court in terms of the order passed by the Appellate Court. The said written statement is affirmed with the cause title of Ordinary Original Civil Jurisdiction and not with the cause title of Commercial Division. The Appellate Court granted liberty to the defendant to comply with the provisions of Section 15(3) of the Commercial Courts Act, 2015.

31. As per Order XI of the Code of Civil Procedure, 1908 as amended under Commercial Courts Act, 2015, the defendant shall file list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit along with written statement or with its counter claim. In the case in hand the defendant has not filed list of documents and copies of documents along with written statement. There is some special circumstances emerged in the present case. The plaintiff has initially filed a summary suit under Order XXXVII of the Code of Civil Procedure, 1908 and the Appellate Court converted into a Commercial Suit. Prior to conversion of commercial suit, the defendant has affirmed written statement in the Ordinary Original Civil Jurisdiction. In the Ordinary Suit, there is no requirement of filing documents and statement of truth along with written statement. Now after conversion of the suit as Commercial Suit,



the defendant intends to bring the documents along with written statement.

32. Considering the above, this Court finds that the facts of the present case are distinguishable from the facts of the case of ***Sushil Kumar Jain (supra)***. In view of the above, the defendant is allowed to amend the written statement as proposed in the amended written statement annexed to the supplementary affidavit except paragraph 2 (two) of the propose amendment.

33. G.A. (Com) No. 7 of 2024 is disposed of.

(Krishna Rao, J.)