2026:DHC:9604

$~

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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\# **CNR No. DLHC010796312024**

\+ **CS(COMM) 1008/2024 and I.A. 44967/2024**

MS CAFE BROWN SUGAR PVT LTD
94, NEAR SHAMBHU DAYAL BAGH,
OKHLA INDUSTRIAL AREA, PHASE – III,
NEW DELHI – 110020, INDIA.

.....PLAINTIFF

(*Through:* *Mr. Nikhil Chawla, Ms. Mansha Mehta and Ms. Parul Tuli, Advocates.)*

versus

1. VYOM FOODCRAFT PVT LTD
11-A/B, CHAMPA DEVI TOWER,
JYOTIBA FHULE ROAD, NEAR MANGAL MANCH,
NANDPURI, SODALA,
JAIPUR, RAJASTHAN – 302006, INDIA.

.....DEFENDANT NO.1

2. **RICHA JALANI**
59, SURAJ NAGAR (EAST),
CIVIL LINES,
JAIPUR, RAJASTHAN – 302006, INDIA.

.....DEFENDANT NO.2

(Through: *Mr. Neeraj Grover, Sr. Advocate with Mr. Yatin Chadha, Ms. Dolly Luthra, Mr. Kashish Sethi, Mr.*

IBC Laws | www.ibclaw.in

2026:DHC:9604

Gurvinder Singh and Ms. Sanandika Pratap Singh, Advocates.)

% Reserved on: 14.10.2026
Pronounced on: 29.10.2026

JUDGMENT

I.A. 28544/2025 (under Order XI Rule 1(5) of the CPC, 1908 as amended by Commercial Courts Act, 2015 r/w Section 151 of CPC

The instant application has been filed on behalf of the plaintiff under Order XI Rule 1(5) of the Code of Civil Procedure, 1908 ('CPC'), as amended by the Commercial Courts Act, 2015 ('Act of 2015'), read with Section 151 of the CPC, seeking leave to place on record additional documents.

2. The main suit is for permanent injunction restraining infringement of Trade Mark and Copyright, Passing Off, etc. in relation to 'BROWN SUGAR'/ / / (hereinafter referred to as 'Brown Sugar Family of Marks').

3. The case of the plaintiff is that it has been using the 'Brown Sugar Family of Marks' in respect of food products and restaurant services since the year 2000, whereas the defendants' trade mark applications for the impugned marks claim use only from 26.10.2010. The suit thus rests on the plea of prior adoption and continuous prior use by the plaintiff.

4. The suit was instituted on 13.11.2024 and was taken up for hearing

IBC Laws | www.ibclaw.in

for the first time on 14.11.2024. Since thereafter, the same was taken up for consideration on multiple dates. The issues are yet to be framed, and the process of admission and denial of documents is yet to commence.

5. The additional documents which are sought to be produced on behalf of the plaintiff and their purported relevance are as under:-

S. No.	Document	Date	Relevancy/ Purpose
1.	Sales Invoices and Ledgers- Copies of Sales Register, Cash Book and various invoices raised by M/s Cafe Brown Sugar Pvt. Ltd. pertaining to services rendered by the Plaintiff.	23-01-2003 to 28-12-2009	To demonstrate continuous business operations and commercial use of the "BROWN SUGAR" mark and turnover generated and goodwill associated with the Plaintiff's cafes and products.
2.	Purchase Bills and Supplier Invoices- Copies of 17 documents comprising the Purchase Book of the Plaintiff Company and bills/ invoices issued by various vendors against raw materials purchased by M/s Café Brown Sugar Pvt. Ltd.	02-07-2003 to 18-06-2009	To substantiate procurement of raw materials, packaging and other inputs used in connection with the Plaintiff's business, evidencing ongoing commercial use of the mark.
3.	Promotional and Marketing Materials- Copies of 11 documents pertaining to various promotional activities undertaken and performed by the Plaintiff at different locations for brand	01-04-2004 to 08-04-2009	To prove brand promotion and advertising expenditure undertaken by the Plaintiff to establish reputation and public association with the

	promotion of M/s Café Brown Sugar Pvt. Ltd.		mark.
4.	TDS Certificates/ Form 16-A- Copies of 49 different Forms 16-A filed under the Income Tax Act for the Assessment Year 2011-2012, evidencing deduction and deposit of tax at source by the Plaintiff.	01-04-2010 to 31-03-2011	To corroborate Plaintiff's financial transactions, accounting compliance and continuity of commercial activity relating to the activity under the 'Brown Sugar' family of marks.

6. The aforesaid documents admittedly pertain to the period between 23.01.2003 and 31.03.2011. The justification for their non-production along with the plaint is stated to be the untraceability of the audited financial statements for the years 2000 to 2011 and the unawareness of the existence of the other documents. The documents are stated to be contemporaneous invoices and related supporting material to substantiate and corroborate the plaintiff's continuous use of the mark during the said period.

7. It is stated that during the course of a Diwali cleaning, the plaintiff had come across the aforesaid documents. For the sake of clarity, paragraph no.2 of the application is extracted as under:-

> *"2. It is submitted that during the course of a recent Diwali cleaning and record-sorting exercise carried out at the Plaintiff's godown and office store rooms, certain relevant business records were traced which had inadvertently not been filed earlier. These documents include invoices evidencing sales, purchases, promotional expenditure, all of which are material to establish the Plaintiff's long, continuous and bona fide use of the 'Brown Sugar Family of Marks'.*
>
> ***
>
> *4. It is submitted that the said omission was purely inadvertent and unintentional, as the concerned physical files were stored in old cartons*

and were discovered only during the aforesaid annual cleaning. It is further stated that immediately upon tracing them, the Plaintiff instructed its counsel to place them on record. It is submitted that the Plaintiff could not have produced the same at the time of filing the present petition despite exercising due diligence, as the said documents were not within its immediate possession, power, or knowledge at the relevant time and came to light only subsequently upon the said discovery."

8. *Vide* this Court's order dated 10.09.2026, the plaintiff was granted two weeks' time to file an additional affidavit in support of the application. Pursuant thereto, the authorised representative and Director of the plaintiff company, in order to justify the cause, has filed an additional affidavit dated 22.09.2026 and has explained that the business of the plaintiff was being looked after by her late husband, who had expired on 20.11.2017. Thereafter, in early 2018, she decided to take over the business. It is stated that she had no knowledge of the precise location or manner in which the older physical records were stored or maintained. It is further stated that the additional documents pertain to the period 23.01.2003 and 31.03.2011 and, therefore, relate to the time prior to her having taken over the business.

9. It is contended that no new case is being set up by way of the additional documents. In the plaint, necessary pleadings have already been made regarding the sales, purchase bills, suppliers invoices, promotional and marketing material etc., and the additional documents only support and corroborate the plaintiff's pleaded case of continuous use.

10. The documents are stated to be necessary to counter the case of the defendants. That no prejudice would be caused to the defendants if the documents are taken on record, whereas grave prejudice would be caused to the plaintiff if they are not. The defendants would have sufficient opportunity to deal with the documents in accordance with law during the

course of the trial.

11. Learned counsel submits that the threshold of 'reasonable cause' under Order XI Rule 1(5) of the CPC is lower than that of 'sufficient cause' or 'good cause', and that procedure, being a handmaid of justice, ought not to come in the way of a fair adjudication of the dispute. In support of his submissions, he has placed reliance on the following decisions: ***Agva Healthcare Private Limited & Ors. v. Agfa-Gevaert NV & Anr.,***[1] ***Hassad Food Company Q.S.C. & Anr. v. Bank of India & Ors.***,[2] ***Darrameks Hotels and Developers Private Limited v. Brilltech Engineers Private Limited,***[3] ***Xero Degrees v. M/s Frankart Global Private Limited & Ors.***,[4] ***M/s Dhawan Box Sheet Containers Pvt. Ltd. v. National Insurance Company Ltd.,***[5] and ***Sabu Trade Pvt. Ltd. v. Raj Kumar Sabu & Ors.***[6]

12. *Per contra*, Mr. Neeraj Grover learned senior counsel appearing on behalf of the defendant contends that the provisions of Order XI Rule 1(5) of the CPC would not empower the plaintiff to place on record the additional documents unless reasonable cause is established. It is also contended that the plaintiff should have undertaken due diligence at the time of filing of the suit and nothing prevented the plaintiff from finding out the entire material to be placed on record. In any case, the documents i.e., TDS Certificates/ Form 16-A, are easily accessible with the Department or with the Chartered Accountant.

13. Learned senior counsel for the defendants further submits that the

[1]2023 SCC OnLine Del 7914.
[2]2019 SCC OnLine Del 10647.
[3]2025 SCC OnLine Del 4024.
[4]2025 SCC OnLine Del 11198.
[5]2025 SCC OnLine Del 9472.
[6]2026 SCC OnLine Del 3234.

plaintiff has filed documents in the instant suit in no less than five tranches, i.e., (i) along with the plaint on 13.11.2024, (ii) on 13.12.2024, (iii) along with I.A. 9199/2025 filed on 04.04.2025, (iv) along with the replication and (v) along with the instant application. It is pointed out that in I.A. 9199/2025, out of the four documents sought to be placed on record, one document dated 26.04.2023 was not taken on record as it was in the power, possession, control and custody of the plaintiff at the time of filing of the suit, whereas the remaining three documents were permitted to be taken on record subject to costs of ₹30,000/- vide order dated 08.05.2025.

14. It is also contended that the plaintiff, along with the plaint, had already filed purchase invoices from the year 2001 (at pages 373-424 and 427-464), sales invoices from the year 2003 (at pages 465-498) and the sales account for the year 2004-05 (at page 499). It is pointed out that page 40 of the present list of documents is identical to page 480 of the documents filed along with the plaint, both comprising the same invoice dated 08.04.2008, and page 08 of the present list of documents is identical to page 499 of the documents filed along with the plaint, both comprising the same sales account for the year 2004-05.

15. According to learned senior counsel, it is impossible that the plaintiff had the first page of the sales account for the year 2004-05 at the time of institution of the suit and found the rest of its pages during the Diwali cleaning. It is, thus, contended that the plaintiff had complete knowledge of these documents and that, after the written statement came to be filed, the plaintiff is seeking to bolster its case of goodwill and user and to overcome the preliminary objections taken in the written statement.

16. I have considered the submissions made by learned counsel for both

the parties and perused the record.

17. Before adverting to the merits of the application, it would be apposite to notice the statutory framework that governs the production of additional documents. In an ordinary civil suit, the consequence of the plaintiff not producing a document along with the plaint is provided in Order VII Rule 14(3) of the CPC.

18. Thus, in an ordinary suit, the provision merely requires the leave of the Court and does not prescribe the grounds on which such leave is to be granted. The position is materially different in a suit relating to a commercial dispute of a specified value. Section 16 of the Act of 2015 provides that the provisions of the CPC, in their application to such suits, stand amended in the manner specified in the Schedule, and that the Commercial Division shall follow the provisions of the CPC as so amended. Sub-section (3) thereof further provides that where any provision of any Rule of the jurisdictional High Court or any amendment to the CPC by the State Government is in conflict with the provisions of the CPC as amended by the Act of 2015, the provisions of the CPC as amended by the Act of 2015 shall prevail.

19. The ambit of Order XI Rule 1 of the CPC has been the subject matter of consideration in a consistent line of decisions. A coordinate bench of this Court in ***Nitin Gupta v. Texmaco Infrastructure & Holding Ltd.***,[7] specifically dealt with a situation where the document was stated to have been misplaced or was not immediately available with the plaintiff, and held as under:-

> *"38. Unless, the Commercial Divisions, while dealing with the commercial*

[7] 2019 SCC OnLine Del 8367.

suits, so start enforcing Rules legislated for commercial suits, and refuse to entertain applications for late filing of documents, especially with respect to documents of suspicious character and continue to show leniency in the name of 'interest of justice' and 'a litigant ought not to suffer for default of advocate', the commercial suits will start suffering from the same malady with which the ordinary suits have come to suffer and owing whereto the need for the Commercial Courts Act, 2015 was felt. Commercial Division is thus not required to entertain or allow applications for late filing of documents, without any good cause being established for non-disclosure thereof along with pleadings. The plaintiff herein has utterly failed in this regard. The application nowhere explains as to why the plaintiff, if had obtained the said letter from the defendant, did not remember the same and make disclosure of the same at the time of filing the police complaint and/or at the time of filing of this suit, even if the letter had been misplaced or was not immediately available. The form prescribed for filing affidavit of documents requires a litigant in a commercial suit to, even if not immediately possessed of a relevant document, disclose the same. A litigant who fails to do so and also does not satisfy the Court while seeking to belatedly file the document, why no disclosure of such document was made, cannot be permitted to so file documents."

20. Thereafter, in ***Zee Entertainment Enterprises Ltd. v. Saregama India Ltd.***,[8] the distinction between the regime governing ordinary suits and that governing commercial suits was explained in the following words:-

"16. A plaintiff in an ordinary suit, if desirous of producing a document required to be produced along with the plaint at a subsequent stage, is only required to obtain the leave of the Court. The Legislature has not laid down the grounds on which such leave is to be granted. I have however in Nitin Gupta supra held that grant of such leave by the Court is not a ministerial function and the Court has to be satisfied qua the reasons for non-production of the documents along with the plaint. The same however places no restriction on the power of the Court to grant such leave. As distinct therefrom, under Order XI Rule 1(5) as applicable to commercial suits, there is an embargo on the Court, not to allow the plaintiff to rely on any document which was in plaintiff's power, possession, control or custody and not disclosed along with the plaint. The disclosure under Rules 1(1) & (2) has to be accompanied with listing and filing of the documents. The said embargo placed on the Court can be lifted only upon the plaintiff establishing reasonable cause for non-disclosure along with

[8] 2019 SCC OnLine Del 10215.

the plaint. The use of the word 'establishing' conveys that there should be something more than a mere explanation for non-production along with plaint, amounting to proof of the explanation."

21. In ***Hassad Food Company*** (supra), on which the plaintiff has placed reliance, this Court explained the threshold of 'reasonable cause' as under:-

"13. ... Under sub-rule (5) of Rule 1 of Order XI, 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 save and except by leave of the Court which leave can be granted only if the plaintiff establishes reasonable cause for non-disclosure along with the plaint. The language used in the sub-rule (5) is that the plaintiff is required to show "a reasonable cause" and not a "sufficient cause" as is ordinarily provided in other provisions.

14. While dealing with Order XIII Rule 2 CPC wherein the words used are: "unless good cause is shown", the Supreme Court in the decision reported as (2002) 1 SCC 535 Madanlal v. Shyamlal, noted the distinction between "good cause" and "sufficient cause" and held that "good cause" requires a lower degree of proof as compared to "sufficient cause" and thus the power under Order XIII Rule 2 CPC should be exercised liberally. Sub-Rule (5) of Rule 1 of Order XI of the Commercial Courts Act, 2015 uses the phrase "reasonable cause" which would require even a lower degree of proof as compared to "good cause"."

22. The Supreme Court in ***Sudhir Kumar @ S. Baliyan v. Vinay Kumar G.B.,***[9] while analysing the aforesaid scheme, drew a clear distinction between documents which were in the plaintiff's power, possession, control or custody at the time of filing of the plaint and those which are discovered subsequently. The relevant extracts read as under:-

"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

[9](2021) 13 SCC 71.

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."

23. Similarly, in ***Bela Creation Pvt. Ltd. v. Anuj Textiles,***[10] while dealing with the analogous provision of Order XI Rule 1(10) of the CPC, this Court held as under:-

"24. In the absence of any averment to the effect that the aforesaid declaration, contained in the Statement of Truth accompanying the written statement and counter-plaint filed by the petitioner, was incorrect, the learned Commercial Court was justified in holding that additional documents, which were in the custody of the petitioner at the time of filing the written statement, could not be permitted to be introduced at a later stage. "Reasonable cause", within the meaning of Order XI Rule 1(10) of the CPC, as amended by the Commercial Courts Act, cannot extend to negligence in filing of documents before the Court. "Reasonable cause", necessarily, must refer to a cause which was outside the control of the petitioner, and which prevented the petitioner from filing the concerned documents along with the written statement."

24. This Court in ***M/s Levitate Mobile Technologies Pvt. Ltd. v. M/s***

Standard Chartered Bank,[11] considered various decisions in the context of the provisions of Order XI of the CPC and culled out the following principles:-

> *"48. Thus, on the edifice of the judicial pronouncements as exposited above, the position of law revolving around Order XI as applicable to commercial disputes could be summarised as below postulates:*
>
> *i. While filing the "commercial suit", the plaintiff ought to file a list of all documents pertaining to the suit along with the photocopies of all such documents in its power, possession, control or custody, along with the plaint;*
>
> *ii. The provision covers documents which are referred to and relied upon by the plaintiff in the plaint as well as the documents in relation to any matter in question in the proceedings, irrespective of whether the same are in favour of or adverse to the case of the plaintiff;*
>
> *iii. In order to ensure true and full disclosure, the plaint shall also contain a declaration on oath of the plaintiff to the effect that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceeding initiated by him, have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have other documents in its power, possession, control or custody;*
>
> *iv. In order to cater to urgent filings, a provision has been carved out whereby the plaintiff can take leave to rely upon additional documents after filing, within a period of 30 days after filing;*
>
> *v. As a measure of last resort and to take care of unforeseen exigencies, Order XI Rule 1(5) permits the plaintiff to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint, 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;*
>
> *vi. At this stage, the Court is not required to look into the genuineness of the documents as the same is to be considered appropriate to examine during the stage of trial and the only concern is whether the plaintiff has demonstrated that a reasonable cause had prevented it from producing the documents at the first instance;*
>
> *vii. The phrase 'reasonable cause', as used by the legislature in Order XI Rule 1(5), conveys a comparatively lower degree of proof as compared to*

[10]2022 SCC OnLine Del 1366.
[11]2025 SCC OnLine Del 818.

the other phrases such as 'sufficient cause' or 'good cause';

viii. However, at the same time, the 'reasonable cause' should be something which ought to be outside the control of the plaintiff and it must have prevented the plaintiff in the first instant from filing such documents at the time of presentation of the plaint;

ix. Moreover, the purported reasons or bald assertions like 'change of counsels', 'advice of Registry', 'bona fide belief that those documents were already in the record of the Court', 'voluminous/bulky nature of documents' etc. under normal circumstances on its own, does not give the imprimatur that 'reasonable cause' has been established. The fundamental pre-requisite of 'reasonable cause' requires something more that would have prevented the plaintiff from placing those documents on record at the earliest opportunity.

x. Having said so, the legislature has consciously used the word 'establishing' in Order XI Rule 1(5) so as to convey that the 'reasonable cause' must be established to the satisfaction of the Court, as opposed to merely showing or averring or pleading the bald assertion of reasonable cause."

25. The said position has been reiterated in ***Zee Entertainment Enterprises Ltd. v. Saregama India Ltd.,***[12] wherein it was observed as under:-

"25. The consistent view of this Court has been that, in commercial suits, timelines are to be strictly followed. The expression 'reasonable cause' occurring in Order XI Rule 1(5) of the CPC has to be a cause which is outside the control of the plaintiff and prevented the plaintiff from filing the additional documents at the relevant stage. Reference in this regard may be made to Bela Creations Pvt. Ltd. v. Anuj Textiles, 2022 SCC OnLine Del 1366, and Rishi Raj v. Saregama India Ltd., 2021 SCC OnLine Del 4897."

26. On the anvil of the aforesaid principles, the first question which arises for consideration is whether the case of the plaintiff falls within the exception carved out in ***Sudhir Kumar*** (supra), i.e., whether the documents were, in fact, not in the plaintiff's power, possession, control or custody at the time when the plaint was filed, or whether the case is squarely governed

[12]2025 SCC OnLine Del 1210.

by the rigours of Order XI Rule 1(5) of the CPC.

27. The exception carved out in ***Sudhir Kumar*** (supra) is available only where the documents "in fact were not in the plaintiff's power, possession, control or custody at the time when the plaint was filed". The emphasis is on the fact of possession, and not on the time at which the plaintiff chooses to look for, or to produce, the documents. In the instant case, the documents were, at all times, lying in the plaintiff's own godown and store rooms. They did not come to the plaintiff from any external source after the institution of the suit. The only thing that changed was the plaintiff's decision to search its own records. It is, therefore, not a case where the documents were discovered subsequently.

28. Rather, it is a case where the plaintiff has itself chosen to discover the documents subsequently. A party cannot, by deferring the search of its own records to a time of its convenience, convert documents which were always in its custody into subsequently discovered documents, and thereby take itself out of the rigours of Order XI Rule 1(5) of the CPC. If such a course were permitted, the requirement of disclosure along with the plaint, and the declaration on oath under sub-rule (3), would be reduced to a mere formality, since any party could avoid the statutory consequence simply by not looking. The case of the plaintiff, therefore, does not fall within the exception carved out in ***Sudhir Kumar*** (supra), and the rigours of Order XI Rule 1(5) of the CPC would apply in full force.

29. The plaintiff has also sought to contend that the documents are in response to the allegations raised by the defendants. However, the documents pertain to the period between 23.01.2003 and 31.03.2011 and are sought to be relied upon to establish the plaintiff's use of the mark prior to

26.10.2010, i.e., the date of user claimed by the defendants. The plea of prior adoption and continuous use since at least the year 2000 is the very foundation of the plaint. The need to place documentary material in support of such a plea was, therefore, apparent at the time of the institution of the suit itself and cannot be said to have arisen only in answer to a case set up by the defendants subsequent to the filing of the plaint, so as to bring the documents within the ambit of Order XI Rule 1(1)(c)(ii) of the CPC.

30. The next question is whether the plaintiff has established reasonable cause for the non-disclosure of the documents along with the plaint. The suit was filed in the year 2024 and was taken up for hearing for the first time on 14.11.2024. Since thereafter, the same was taken up for consideration on multiple dates. The instant application came to be filed after the filing of the written statement, and it does not explain the reasonable cause for the non-filing of the documents at the time of institution of the suit. The documents were admittedly in existence and, as noted above, were lying in the plaintiff's own premises.

31. More importantly, the plaintiff had, along with the plaint itself, filed purchase invoices from the year 2001, sales invoices from the year 2003 and the sales account for the year 2004-05, which are documents of the same period and of the same nature as the documents now sought to be produced. The defendants have specifically pointed out that two of the documents now sought to be filed are identical to those already filed with the plaint, namely, the invoice dated 08.04.2008 and the sales account for the year 2004-05. Neither the application nor the additional affidavit offers any explanation for the same. This demonstrates that, at the time of the institution of the suit, the plaintiff not only had access to, but had in fact drawn upon, the very records

from which the present documents are sought to be produced.

32. It defies logic that the plaintiff could have located and filed the first page of its sales account for the year 2004-05 along with the plaint, and yet the remaining pages of the very same account remained hidden in old cartons, only to surface during a Diwali cleaning nearly a year later. Records of the same account, of the same period and of the same nature are not ordinarily kept at different places, and no such case has even been pleaded.

33. The stated reason that the documents were found during a Diwali cleaning in the year 2025 does not, therefore, inspire any confidence. Apart from a bald averment, the application does not disclose when the said exercise was carried out, by whom the documents were traced, which godown or store room they were found in, or why the plaintiff's records could not be searched before the plaint was verified.

34. Admittedly, the authorized representative had taken over the business in early 2018, i.e., more than six years before the institution of the suit. The suit was instituted thereafter with the declaration on oath contemplated under Order XI Rule 1(3) of the CPC that all documents in the power, possession, control or custody of the plaintiff had been disclosed. The plaintiff, being a company, continued to be in custody of its own records throughout, and the change in the person managing its affairs is an internal arrangement of the plaintiff, which cannot be said to be a cause outside its control. A lack of knowledge about the precise location of one's own records is, at best, a case of the documents being misplaced or not immediately available, which, as held in ***Nitin Gupta*** (supra), does not absolve a litigant in a commercial suit of the obligation of disclosure.

35. In the instant case, the reason assigned for the belated filing is itself

found to be untenable.

36. It is also relevant to note that this is not the first occasion on which the plaintiff has sought to place additional documents on record. As noted above, the plaintiff has filed documents in multiple tranches and an indulgence has already been shown to the plaintiff in I.A. 9199/2025, whereby three documents were permitted to be taken on record subject to costs vide order dated 08.05.2025. This Court in ***M/s Levitate Mobile Technologies*** (supra), in similar circumstances, observed as under:-

> *"59. ... The plaintiff in all fairness ought to have produced all relevant documents which were necessary for a fair adjudication of the instant case initially at the time of filing of the plaint or at best, at the time of filing of the I.A. No.12696/2017 when similar documents were sought to be placed on record and the plaintiff was permitted to do so. In any case, these documents should have been placed before the deposition of the plaintiff was commenced. The ground of inadvertent mistake has been accepted once in I.A. No.12696/2017 and it could not be urged time and again to improve the case at every step of the journey. ..."*

37. If such a plea, at this stage, is accepted for one reason or the other, the process will become endless, which is bound to lead to greater misuse. A plaintiff would then be at liberty to file documents in instalments, each time citing a fresh discovery within its own premises. Such a mischief has been sought to be remediated by the enactment of the Act of 2015 and by bringing the amended provisions of the CPC applicable to commercial suits. The observations of this Court in ***M/s Levitate Mobile Technologies*** (supra) are apposite in this regard, which read as under:-

> *"66. Needless to state, this Court in the case of Zee Entertainment Enterprises Ltd. has rightly observed that if leave is granted in a liberal manner in the name of interest of justice, the litigants and practitioners of commercial suits would never wake up to the changed circumstances in which a commercial suit is to be conducted. It is, thus, necessary for the Courts to enforce such change and discipline, by ceasing to exercise the discretion in this respect. The discretion of the Court must be exercised in*

harmony with the legislative intent behind a provision, especially when the legislative intent is expressed in unequivocal and unambiguous terms."

38. In view of the aforesaid, this Court is of the considered opinion that the documents sought to be placed on record were in the power, possession, control and custody of the plaintiff at the time of the institution of the suit. That it is not a case of documents being discovered subsequently, but of the plaintiff having chosen to discover them subsequently; and that the reason and justification put forth by the plaintiff for seeking leave, namely, the discovery of the documents during a Diwali cleaning, is not only untrue but also extremely illogical. The plaintiff has, thus, failed to establish any reasonable cause for the non-disclosure of the documents along with the plaint.

39. Accordingly, the instant application stands dismissed. The documents filed along with the application shall not form part of the record of the suit.

CS(COMM) 1008/2024 & I.A. 44967/2024

List on 09.12.2026.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

OCTOBER 29, 2026
Nc/NK