



2026:DHC:703



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

+ Judgment reserved on: 20.01.2026
Judgment delivered on: 29.01.2026

CM(M)-IPD 4/2026, CM 10/2026, CM 12/2026

SHYAM RASTOGI TRADING AS SHYAM HOSIERY
INDUSTRIES AND ANRPetitioners

versus

HUGO BOSS TRADE MARK MANAGEMENT GMBH AND CO
KG AND ANRRespondents

Advocates who appeared in this case:

For the Petitioners : Mr. Kirtiman Singh, Senior Advocate alongwith
Mr. Chandra Prakash, Mr. Abhinav Kumar, Ms.
Aindri Sahah and Mr. Maulik Khurana,
Advocates.

For the Respondents : Mr. Ajay Amitabh Suman, Mr. Shravan Kumar
Bansal and Mr. Rishi Bansal, Advocates.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

CM 11/2026 (condonation of delay)

1. By way of the present application, the petitioners seek condonation of delay of 36 days in filing the present petition.
2. For the reasons stated in the present application, the application is allowed and the delay of 36 days in filing the present appeal is condoned.
3. The application stands disposed of.

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4. Present petition has been filed under Article 227 of the Constitution



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of India, 1950 read with Section 151 of Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) assailing the order dated 12.09.2025 passed by the learned District Judge (Commercial Court-02), Saket Courts, New Delhi in suit bearing CS(COMM) 538/2023 titled *Hugo Boss Trademark Management GMBH & Company KG vs. Shyamji Rastogi*, whereby the application filed by the petitioner/defendant seeking to place on record additional documents, was dismissed.

5. Bereft of reference to the facts mentioned in the suit plaint, it would be relevant to only consider that the petitioners had filed an application under Order XI Rule 1(10) and Order XIII Rule 1 of CPC for placing additional documents on the record of Trial Court in support of its contention that the petitioners are prior user of the trademark BIG BOSS, which would have, in turn, supported the application under Order XXXIX Rule 4, CPC for vacating the *ad interim* injunction order dated 25.09.2023.

6. The petitioner sought to place on record the following documents, as enumerated in para 4 of the application:-

S. No.	DOCUMENTS DESCRIPTION	RELEVANCY
1	Sale Tax Challan Year 1996-97 1998-99 1999-2000 2000-01 2001-02 2002-03 2003-04 2004-05	These Documents include Judgments of the Sale Tax Department, Challans, and sale tax return forms from year 1996 onwards. These documents demonstrate the authenticity of the firm i.e. Shyam Hosiery Industries. These records confirm that the firm has been consistently filing its challans, sale tax, and income tax return. Till the year 2020-21 Shyam Hosiery Industries was functional and sale tax was filed in the name of Shyam Hosiery Industries and in the year 2021-23. The firm Shyam Hosiery Industries was later assigns BIG BOSS as a BIG BOSS GARMENTS PVT. LTD. On 22-01-2022 and GST Return was filed in the name of BIG BOSS GARMENTS PVT. LTD.



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2	Acknowledgment of the Income Tax Return, from financial year 2001 to 2023	These documents demonstrate that that the defendant was engaged in business primarily dealing in the hosiery items.
3	Printing Bills/ Purchase bills Year 27-10-1995 03-01-2003 10-10-2009 26-06-2005 05-09-2009	These are the crucial documents in which defendant Shyam Hosiery Industries purchased the packing material mentioned in the bill i.e. design charges and materials descriptions from 1995 to design their logo, "BIG BOSS" on the articles. Since 1995, the defendant Shyam Hosiery Industries has been manufacturing articles under the "BIG BOSS" Brand since 1995.
4	Sale of Shyam Hosiery Industries from years 1996 to 2022, BIG BOSS Garments Pvt. Ltd. Sales 2022-2023	This document demonstrate that the defendant Shyam Hosiery Industries was sales from 1996 to 2022 and BIG BOSS Garments Pvt. Ltd. sales in year 2022-23
5	A copy of the bill of the BONDS KNITTING MILLS a manufacturing unit in Tirupur, Tamil Nadu	Purchased goods in the defendants brand name BIG BOSS in the year 2009, 2010 and 2011. This documents shows that the defendant purchased goods under consideration (WHITE LABELING) in the brand name BIG BOSS.
6	A Copy of the bill which was issued by Vaashavi Garments, a Manufacturing Unit in Tripur, Tamil Nadu	On October 5, 2013, a bill was issued by Vaashavi Garments, a manufacturing unit based in Tirupur, Tamil Nadu. Shyam Hosiery Industries had placed an order with them for garments under their brand name, "Big Boss." This manufacturing unit specializes in producing garments and printing brand logos as per customer specifications.
7	Bills of Shyam Hosiery Industries from year 1997 to June 2023 On 03-05-1997, 26-05-1997 and 03-12-1997	This documents shows that these bills were given to different customer who buys goods from the Shyam Hosiery and in these bills it is clearly written the article name as Big Boss "BB", However from 1996 to 2003, during this period computerized bills was not used , and manual bills were used, the name Big Boss is not mentioned. However, the sale tax Judgement specifies that the hosiery goods were manufactured with labour charges and the stitching charges it is clearly mentioned in the Judgement of the sale tax department.



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8	A true copy of the computerized bills since 10-01-2004	From this document it is evident that Shyam Hosiery sold garments under the brand name "Big Boss." From 2004 onwards, computerized bills were issued, confirming that Shyam Hosiery Industries sold "Big Boss" products to various customers, and after the BIG BOSS GARMENTS PVT. LTD. Was operational in the year 2022, bills were issued in the name of this company.
9	Advertisement Bills in the name of Dainik Jagran	This documents shows that the defendant Shyam Hosiery Industries paid the advertisement bills to Jagran Prakashan Ltd to advertise their brand i.e. BIG BOSS in newspaper.
10	A copy of the newspaper cutting dated 23-12-2009, 30-12-2009, 14-02-2009 and 07-02-2010	This document indicates that the advertisement for the "Big Boss" was published in Dainik Jagran newspaper.
11	A copy of the bills of Spica Elastic dated 04-12-1996 and 25-12-1996 a renowned brand who sells elastics	Bills from Spica Elastic dated 04/12/1996 and 25/12/1996, bearing bill numbers 7952 and 8704 respectively, were issued in the name of Vidya Traders. These bills confirm that elastic Weaving with the "BIG BOSS" name was ordered and used in the production of Big Boss articles. At the time when defendants firm has applied for the registration and it got registered in the year 14-10-1996 where defendant placed an order for elastic through his father's proprietorship firm, Vidya Traders. Since Vidya Traders was a registered firm, the application for the elastic was made through defendants father's name, and the department approved the request on that basis.
12	A true copy of the Company registration Certificate dated 14-10-1996.	Shyam Hosiery Industries was officially registered on 14/10/1996. Subsequently, we relocated the office and submitted an application to the Sales Tax Department to update the records. In a document registered in 1997, the department acknowledged and recorded the office relocation. Furthermore, on 20/03/2007, in compliance with Section 213B, the department formally documented the office relocation in their records and included it in our registration letter.

7. The "*reasonable cause*" for non disclosure of documents at the time of filing written statement, as stipulated in Order XI Rule 1(10) CPC as applicable to Commercial Courts and as stated in the application filed by



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the petitioner are brought out in para 6 of the said application. For convenience, para 6 is extracted hereunder:-

“6. That since these documents were old and records were not available at the time of filling of the written statement and only after filling of the appeal in the high court against the order dated 2ND JANUARY, 2024 (hereinafter referred as "impugned order") passed by the Court of Ms Anuradha Shukla Bhardwaj Ld. DJ(Commercial- Court 02), South District, Saket Courts, New Delhi in the Suit being CS (Comm) No.538 of 2024 and titled as HUGO BOSS Trademark Management GMBH& Co KG & Anr. (hereinafter referred as 'subject suit') in which vide the said order, this Hon'ble Court has dismissed the application under Order XXXIX Rule 4 CPC of the defendant filed for vacating the ex-parte ad interim order dated 25.09.2023 thereby allowing the Application under Order XXXIX Rules 1 & 2 CPC filed by the plaintiffs that the defendant started searching when, while hearing of the appeal a query was raised by the hon'ble court to show sales having been done from the year 1995 and thus granted time to to bring on record these relevant sale documents being done from the year 1995. Thus only after the said directions given vide order dated 05.07.2024 that the defendants started searching from the old records and after searching could found these documents which is being placed along with this Application. A true copy of the order dated 05.07.2024 is being annexed herewith and marked as Annexure B.”

8. The learned Trial Court vide impugned order dated 12.09.2025 dismissed the application of the petitioner/defendant by relying upon a number of judgments passed by this Court as also on merits. The learned Trial Court considered the relevancy of the documents and was not convinced by the cause shown by the petitioner for not having filed these documents alongwith the written statement or soon thereafter, on the premise that most of the documents, particularly documents mentioned at S.No.7 to 10, were in control and possession of the defendant yet were not produced alongwith the written statement. So far as the other documents are concerned, like sale records etc. from the year 1996 to the year 2003 also were not permitted to be taken on record as the said documents were found to be belonging to the petitioner/defendant. For the two documents i.e. those mentioned at S.No.5 and 6 in the application, though were noted



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to be bills issued to the plaintiff by two different parties, yet, the learned Trial Court had noted that the petitioner had not furnished any reason as to why these two could not be filed alongwith the written statement. Another relevant observation of the learned Trial Court was that the petitioner had nowhere stated that these documents were not with it or that it had to obtain these documents from any third party. Thus, finding no justifiable reason, the application under Order XI Rule 1(10) CPC filed by the petitioner/defendant was rejected *vide* impugned order dated 12.09.2025.

9. Mr. Kirtiman Singh, learned senior counsel appearing for the petitioner at the outset argued that at the stage of filing of the application under Order XI Rule 1(10) CPC, the Courts are obliged and mandated to consider only “reasonable cause” for not having produced or filed the said documents alongwith the written statement. He contended that it is not the mandate of the learned Trial Court to consider the sufficiency or relevancy of the documents itself. All that has to be considered is whether the petitioner was able to furnish “reasonable cause” for not having filed these documents alongwith the written statement.

10. Learned senior counsel also emphatically argued that the moot question before the learned Trial Court in the suit was that whether the petitioner/defendant is entitled to use the trademark BIG BOSS having trademark registration in the marks/labels as contended in the written statement and using it since 1995. He emphasized that all the documents as mentioned in the said application were documentary proof which would enable the petitioner/defendant to not only discharge the onus placed on it but also establish that the trademark BIG BOSS had been adopted and being used since the year 1995. This, according to learned senior counsel, would in turn establish its prior user of the trademark BIG BOSS. That, in



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the submission of the learned senior counsel, would not only be the substratum of the petitioner/defendant's defence but would also demolish the case set up by the respondent/plaintiff. According to him, the learned Trial Court misdirected itself in not considering this crucial aspect and concepts of law while passing the impugned order.

11. Having argued as above, learned senior counsel referred to the documents mentioned in para 4 of the application and also pointed out to the relevancy of the said documents which has been substantiated in the table in para 4 itself. He was at pains to indicate that the documents in the nature of Sales Tax Challan commencing from the year 1997 through till 2004-05, acknowledgement of Income Tax Returns from FY 2001-2023, printing bills/purchase bills from 27.10.1995 to 05.09.2009, sales documents of the defendant from the year 1996 to 2022 and its successor of the year 2022-23 and other relevant documents enumerated in the list, were those documents which would have inevitably proved and established prior user of the trademark BIG BOSS by the petitioner. To each of the aforesaid documents, learned senior counsel sought to explain as to why the same were not filed alongwith the written statement but were necessary to be taken on record even at a belated stage. His contention was that most of the documents, though pertain to the petitioner yet, were of a period commencing from 1996-97 onwards. He submitted that it took a substantial time to obtain these documents, some of which were invoices/bills which the petitioner had issued to third parties which had to be obtained from those parties, which inevitably took a long time. He contended that procedural law is only a handmaid of justice and substantive law and not the other way round. He greatly emphasized that merely because some delay had occurred in filing the said documents, would by itself not be a



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reason for the Court not to take the same on record if otherwise, the documents merited acceptance as also that those documents would be crucial to a party to discharge its onus as also establish its defence. That, according to him, is the settled law. He relied upon the judgments of this Court in ***Mrs. Renu Chowdry & Ors. vs. Mr. Vivek Sharma & Ors.***, CS(OS) 358/2017 dated 05.12.2025 and ***Md. Islamuddin vs. SS Kapoor***, CM(M) 1137/2022 dated 01.11.2022, in support of his contentions.

12. While referring to the judgment of this Court in ***Hassan Food Company Q.S.C. & Anr. vs. Bank of India & Ors.***, CS(COMM) 9/2018 dated 15.10.2019, learned senior counsel submitted that this Court while exercising its discretionary power had condoned the delay in filing the documents under Order XI Rule 1(5) of the CPC. He referred to paras.13 & 14, to submit that the term “*reasonable cause*” is at a much lower threshold of proof than “*good cause*” or even “*sufficient cause*”. Correlating this definition to the term “*reasonable cause*” employed in Order XI Rule 1(10) CPC, learned senior counsel contended that the threshold of proof being lower, there was no impediment for the learned Trial Court to accept the documents and provide an opportunity to the petitioner/defendant to discharge its onus based on these documents. According to him, the learned Trial Court overlooked the crucial nature of these documents, which would have gone a long way to establish the petitioner as a prior user. He also relied on the judgement in ***Sugandhi (Dead) vs. P. Rajkumar: (2020) 10 SCC 706*** to submit that the Hon’ble Supreme Court had infact condoned the delay therein and permitted the defendant in that case to place these documents on record despite considerable delay on the ground that the said documents were traced at a later stage.



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13. Mr. Singh also stated that it was only once the petitioner/defendant had filed an appeal bearing FAO(COMM) 87/2024 assailing the order dated 02.01.2024 granting *ad interim* injunction in favour of the respondent/plaintiff, while dismissing the application of the petitioner/defendant under Order XXXIX Rule 4 CPC and upon the query of the learned Division Bench of this Court in respect of sales from the year 1995 to establish prior use, that the petitioner/defendant had sought time to file an application to place on record additional documents. According to him, it was only after the observation of the learned Division Bench in the order dated 05.07.2024, that the defendants started searching from old records and after finding the relevant documents, preferred the application before the learned Trial Court to place the same on record. He submitted that on an overall conspectus, the impugned order is unsustainable both in law and on facts and therefore, may be quashed and set aside, simultaneously allowing the application under Order XI Rule 1(10) CPC filed by the petitioner/defendant.

14. *Per contra*, Mr. Suman, learned counsel for the respondent/plaintiff vehemently opposed and refuted the submissions made on behalf of the petitioner. Learned counsel while referring to the order dated 05.07.2024 of the learned Division Bench in FAO(COMM) 87/2024 submitted that a plain reading of the order clearly indicates that neither any liberty nor any permission was granted by the learned Division Bench of this Court for placing on record any of the documents which were listed in the application under Order XI Rule 1(10) CPC. Thus, according to him, the basis of the submission on behalf of the petitioner is without any factual foundation and ought to be rejected. Even otherwise, he submitted that even till the subsequent date of listing i.e., 15.01.2025 of the appeal before the learned



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Division Bench, the petitioner/defendant had failed to file any such documents either on the record of the Appellate Court or the Trial Court. He relied upon the observation noted by the learned Division Bench in the order dated 15.01.2025. Learned counsel emphasized that the conduct of the petitioner does not inspire any confidence in the explanation offered by it. He stated that while the written statement was filed on 27.10.2023, issues were framed on 21.02.2024, the application under Order XI Rule 1(10) CPC was preferred by the petitioner only on 20.01.2025. Thus, the application was preferred after almost one year and four months from the date of filing of the written statement. He further submitted that though the petitioner has heavily relied on the order dated 05.07.2024 of the learned Division Bench of this Court, yet the application seeking to place on record additional documents before the Appellate Court was stated to have been filed after 6 months, on 14.01.2025, which has been noted in the order dated 15.01.2025. He submitted that this factual background would not only demonstrate but establish the absolute casual, cavalier, lackadaisical and indifferent attitude of the petitioner/defendant in substantiating its defence. He states that the Court ought not to come to the aid of such casual litigants and this being a commercial suit, such parties should not be allowed to delay the proceedings of commercial suits.

15. That apart, on merits, learned counsel submitted that even if the sufficiency and relevancy of the said documents is not taken into consideration, yet the fact that these documents pertain to and belong to the petitioner/defendant has not been denied, rather, admitted by him. Inviting attention to para 5 and 6 of the application under Order XI Rule 1(10) CPC, learned counsel submitted that no explanation, much less “*reasonable cause*” has been tendered by the petitioner/defendant as to why such



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immense delay in filing the said documents has occurred. He pointed out to the fact that the only reason in writing, in paragraph 6, is that it is only pursuant to the observation *vide* order dated 05.07.2024 in FAO(COMM) 87/2024 of the learned Division Bench of this Court that the petitioner/defendant commenced searching from the old records and found the enlisted documents. This explanation, according to the learned counsel, is not a “reasonable cause” for not having produced the documents alongwith the written statement, as also not relevant for consideration under the provisions of Order XI Rule 1(10) CPC.

16. Learned counsel, while referring to the table in para 4 of the application, pointed out to each of the documents to submit that all the documents undisputedly belong to the petitioner which could and ought to have been filed along with the written statement. Having not filed within the period so prescribed, no indulgence ought to be granted by this Court to such callous litigants. He submitted that all the documents like Sales Tax Challans, Income Tax Returns and even the sale invoices pertaining to the year 1997 etc. cannot be said to be not in the possession of the petitioner. That apart, he also pointedly drew attention to the documents which are purported to be sale invoices on and from the year 2007 placed on paper book commencing from page 608, to submit that these are computer generated invoices which too could atleast have been produced by the petitioner alongwith its written statement, being in power and possession of the petitioner/defendant.

17. In addition to the above, learned counsel submitted that as per the mandatory proforma prescribed under the Commercial Courts Act, 2015, it is necessary for the parties to correctly describe, while filing the documents alongwith the list of documents, as to whether a document is in the power,



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possession, control or custody of the party; whether the documents produced are original or photocopies or office copies of the said documents; the mode of the execution of the said documents and the line of custody of such documents. While pointing out to the aforesaid, learned counsel invited attention of this Court to Page 110 of the paper book, which is the proforma of list of documents filed by the petitioner/defendant before the learned Trial Court, alongwith its application. Pointing out to the said list of documents, he submitted that none of the mandatory details as pointed above have been filled at all by the petitioner, violating the prescribed procedure. It is his contention that it is not an innocuous error but a deliberate attempt to overreach the Court by not disclosing true facts. According to learned counsel, had the petitioner truthfully disclosed the mandatory requirements in the said proforma, the application by itself would have been bereft of any merit and would have been dismissed in *limine*. In support of his contentions, he relied upon the judgment of the Hon'ble Supreme Court in ***Sudhir Kumar @ S. Baliyan vs. Vinay Kumar G.B.: (2021) 13 SCC 71***. He stated that the Hon'ble Supreme Court in the said judgment had declared that the Statement of Truth and the procedure prescribed in under Order XI Rule 1(10) CPC so far as Commercial Courts are concerned, ought to be read as mandatory. Thus, according to him, the lack of description in the proforma of list of documents itself would disentitle the petitioner from any relief at all. He prayed that the present petition be dismissed with exemplary costs so as to ensure that no other party misuses this provision.

18. This Court has heard the arguments of Mr. Kirtiman Singh, learned senior counsel for the petitioner and Mr. Ajay Amitabh Suman, learned counsel for the respondent, and perused the records of the case.



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19. At the outset, it may be of some significance to bear in mind the judgement of this Court in ***Hassad Food Company Q.S.C. (supra)***, while dealing with an application under Order XI Rule 1(5) of the CPC as applicable to the Commercial Courts Act, 2015 defining the word “*reasonable cause*” for non-disclosure employed in the said provision. Para nos.13 and 14 of ***Hassad Food Company Q.S.C. (supra)***, would be relevant and read thus:-

“13. Perusal of Order XI as noted above reveals that the plaintiff is bound to file all documents in its power, possession, control or custody with the plaint and in case of urgent filing of a suit if some additional documents are to be filed under sub-rule (1) of Rule 1 of Order XI, the plaintiff may seek leave of the Court to rely on additional documents which additional documents are required to be filed within 30 days of filing of the suit. 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 vs. 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. SubRule (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”.”

The learned Single Judge of this Court had interpreted the words “*reasonable cause*” to require a lower degree of proof as compared to “*good cause*” predicated on the judgement of the Hon’ble Supreme Court in ***Madanlal vs. Shyamlal: (2002) 1 SCC 535*** which was engaged with interpretation and distinction between the words “*sufficient cause*” and



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“good cause” occurring in Order XIII Rule 2 of CPC and thus, should be exercised liberally as “good cause” would require lower degree of proof than “sufficient cause”.

20. The principle laid down cannot be quarrelled with, subject to a party showing a “reasonable cause”. Undoubtedly, the threshold of proof may be lower than that of “good cause”, yet there has to necessarily be available a reasonable cause for the lapse. Essentially, it has to be borne in mind that the party filing documents belatedly and not with its pleadings has to offer such cause, these being commercial suits under the Commercial Courts Act, 2015. The need and requirement of a party to the *lis* to be alert and vigilant, needs to be underscored. This, of course, is not meant to lay down that in all such cases, the delay ought not to be condoned, yet the emphasis on time bound procedure laid down meticulously in the Commercial Courts Act, 2015 and the amendments made to the CPC, particularly Order XI, needs to be emphatically adhered to.

21. The other cases cited and relied upon by the petitioner deal with ordinary civil suits and not filed under the provisions of Commercial Courts Act which is an essential *sine qua non* to distinguish the facts of this case with those in the said judgements. While the Hon’ble Supreme Court in ***Sugandhi*** (*supra*) did hold that the procedural and technical hurdles shall not be allowed to come in the way of the Court while doing substantial justice, that however was also in the context of Order VIII Rule 1A(3), CPC and not the amended Order XI, CPC in the context of commercial suits under the Commercial Courts Act.

22. At this stage, it would also be relevant to consider the judgement of the Hon’ble Supreme Court in ***Sudhir Kumar @ S. Baliyan*** (*supra*). In this



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case, the Hon'ble Supreme Court was dealing with an application under Rule 1 of Order XI, CPC as applicable to the commercial suits filed by the appellant/plaintiff therein. While observing that the Statement of Truth under Order XI Rule 1(3) is a mandate, compulsorily to be adhered to by the plaintiff, it was noted that the documents which were in the power, possession, control or custody and not disclosed with the plaint can be permitted by the leave of the Court under Order XI Rule 1(5), CPC only upon the plaintiff establishing a reasonable cause. It was also held by the Apex Court that the requirement of establishing reasonable cause for non-disclosure of the documents alongwith the plaint shall not be applicable if it is averred, that it is the case of the plaintiff (the appellant in that case) that those documents in controversy have been found subsequently and were not in the power, possession, control or custody of the plaintiff at the time when the plaint was filed. Consequently, it was held that the rigors of establishing reasonable cause in non-disclosure along with the plaint may not arise in cases where the documents sought to be produced are discovered subsequent to the filing of the plaint.

23. This principle, as laid down in ***Sudhir Kumar @ S. Baliyan*** (*supra*) can be made applicable to Order XI Rule 1(10), CPC in cases where the defendant seeks to file documents not disclosed with the written statement as mandated by Order XI, CPC. When this principle is applied to a defendant, it would mean those documents which were not in the power, possession, control or custody of the defendant when the written statement was filed. Thus, the reasonable cause to be explained would be with respect to the non disclosure as to why the same were not filed with the written statement and may not be for the delay in filing the documents, *per se*. Essentially, the qualification primarily is the reason for non-disclosure



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rather than the delay itself. Of course, the Courts may have to bear in mind the stage of the proceedings too when such an application under Order XI Rule 1(10) CPC is being filed.

24. That said, this Court would now advert to the facts obtaining in the present petition. It is relevant to bear in mind that the application seeking permission to place additional documents on record on behalf of the petitioner/defendant was preferred after the issues were already framed on 21.05.2024. To appreciate and apply the principle laid down above, it would be apposite to extract para nos.5 and 6 of the application filed by the petitioner before the learned Trial Court. The same read thus:-

“5. That these documents are material and necessary for the fair and just adjudication of the present suit, as they establish the existence and operations of Shyam Hosiery Industries and its use of the “Big Boss” article name. A true copy of the complete list of documents as mentioned above is being enclosed as ANNEXURE A.

6. That since these documents were old and records were not available at the time of filling of the written statement and only after filling of the appeal in the high court against the order dated 2ND JANUARY, 2024 (hereinafter referred as "impugned order") passed by the Court of Ms Anuradha Shukla Bhardwaj Ld. DJ(Commercial- Court 02), South District, Saket Courts, New Delhi in the Suit being CS (Comm) No.538 of 2024 and titled as HUGO BOSS Trademark Management GMBH & Co KG & Anr. (hereinafter referred as 'subject suit') in which vide the said order, this Hon'ble Court has dismissed the application under Order XXXIX Rule 4 CPC of the defendant filed for vacating the ex-parte ad interim order dated 25.09.2023 thereby allowing the Application under Order XXXIX Rules 1 & 2 CPC filed by the plaintiffs that the defendant started searching when, while hearing of the appeal a query was raised by the hon'ble court to show sales having been done from the year 1995 and thus granted time to to bring on record these relevant sale documents being done from the year 1995. Thus only after the said directions given vide order dated 05.07.2024 that the defendants started searching from the old records and after searching could found these documents which is being placed along with this Application. A true copy of the order dated 05.07.2024 is being annexed herewith and marked as Annexure B.”

[Emphasis supplied]



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25. A perusal of the explanation offered by the petitioner/defendant clearly brings to fore that there is no reasonable cause tendered as to why the documents sought to be produced by the petitioner were not disclosed at the time of filing of the written statement. All that has been stated is that the said documents are old and the records were not available at the time of filing of the written statement. Moreover, the search for the documents commenced only after the learned Division Bench of this Court is claimed to have put a query in the appeal so filed and consequent directions were passed in the order dated 05.07.2024. In order to check the veracity of the claim, this Court has also perused the order dated 05.07.2024 passed in FAO(COMM) 87/2024, para nos.6 and 7 of which are relevant and are reproduced hereunder:-

“6. Counsel for the appellants says that he would like to move an application for additional documents which would disclose that sale of hosiery products between 1996-1997 have been made by the appellants under the brand name/trademark “Big Boss” and “Big Boss Double Decker”.

6.1 If such an application is filed, this aspect will be examined on the next date of hearing.

7. We also note that the judgment and order dated 02.01.2024 passed by Ms Anuradha Shukla Bhardwaj, learned District Judge (Commercial Court-02), South district, Saket, New Delhi, is impugned in the appeal.”

Contrary to what the petitioner has stated in para 6 of the application, there is no permission granted for placing documents on record, rather, the learned Division Bench has only noted the submission of the learned counsel that an application to file additional documents would be filed. It is admitted that the search for these documents commenced after the said order was passed.

26. However, what is relevant is offering explanation of the “reasonable cause” for not having disclosed these documents alongwith the written



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statement, as required and mandated by law. Clearly, para nos.5 and 6 of the application, rather, the entire application is bereft of any such explanation or reasonable cause as to why the documents sought to be filed by the petitioner/defendant were not disclosed alongwith the written statement. In such circumstances, it would be very difficult for this Court to lean in favour of the petitioner.

27. Learned senior counsel for the petitioner was at pains to explain the nature of the documents and as to how and why the same were obtained belatedly but yet, sought to be placed on record the moment the petitioner laid hands on them. This Court is not convinced by the explanation. This is for the reason that the defence of the petitioner/defendant before the learned Trial Court is that the petitioner is a “prior user” of the trademark in question BIG BOSS. It also claimed that the prior user is from the year 1996. If that were to be believed, there being no reason to disbelieve either, then it was all the more imperative for the petitioner to have disclosed that these documents were not in its power, possession, custody or control at the time of filing the written statement. This Court has also considered the documents listed in para 4 of the application and extracted in para 6 above. Manifestly, most of the documents can be said to be in power, possession, custody or control of the petitioner. Sales Tax Challan from the year 1996-97 till 2004-05, Acknowledgement of Income Tax Returns from FY 2001 to 2023, Purchase Bills from 27.10.1995 onwards, Sales of Shyam Hosiery Industries from the years 1996 to 2022 and of BIG BOSS Garments Pvt. Ltd. of 2022-2023, True Copies of the Computerised bills from 10.01.2004 and advertisement bills in the name of Jagran Prakashan Ltd. for advertising the brand BIG BOSS, are the additional documents of the petitioner and thus, cannot be said to be beyond its power, possession,



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custody or control. So far as the other documents are concerned, even if the same are assumed to be not in power, possession, custody or control of the petitioner, it was mandated by law to disclose the same at the time of filing the written statement. These documents too pertained to the petitioner alone, and therefore, even if it did not have possession or custody of the same, the same ought to have been disclosed. This is for the reason that these documents are intrinsic and crucial to determine the “prior use” of the trademark BIG BOSS.

28. That said, it would also be relevant to consider as to the disclosure statement tendered by the petitioner in the List of Documents filed alongwith the documents in question, accompanying the application under Order XI Rule 1(10) CPC. It would be apposite to reproduce the same as it would have an impact on the decision. The said List of Documents is extracted hereunder:-

List of Documents

S. No.	Documents	Document in power/ possession/ control custody of Document	Original or Photocopies of office copies	Mode of execution	List of Custody	Page No.
1.	Representation of Defendants P/L, Sale Chalan Judgment, and Sale Tax Return from year 1996 to 2023	Defendant No.1	Digital Print Outs			13-185
2.	Acknowledgement income tax Return, audit Report from F/Y 2001 to 2023					186-274
3.	Printing bill of Year 1995, 2003					275-276
4.	Purchase of ready goods in our brand name bill and freight bill					277-291



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5.	Defendants Representation of bills, order-sheet manual/hand written in the year 1997-2003					293- 298
6.	Defendants Representation of computerizes bill issued from Shyam Hosiery industries and big boss garments Pvt. Ltd.					299- 434
7.	Defendants Representation of advertisement and bill of advertising of Jagran Prakashan					435- 442
8.	Defendants Representation of bills, Freight bills of Spica Elastic in which elastic was ordered to Vidhya Traders					443- 449
9.	Representation of Shyam Hosiery Industries Firm Registration Certificate					450
10.	Brand Assignment Shyam Hosiery Industries to Big Boss Garments Pvt. Ltd.					451- 461
11.	Yearly Sales Details Chart 1996- 2023					461- A
12.	High Court order Dated 05.07.2024					462- 463

29. *Ex facie*, the said list of documents is bereft of the mandatory fields required to be filled by the petitioner/defendant, which alone could have laid down the parameters in which the said documents could have been



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considered. The lack of such fulfilment of the mandate leaves no choice but to hold against the petitioner. Moreover, this List of Documents was not even filed with the written statement which was the essential and mandatory requirement of Order XI CPC as applicable to the commercial suits. Thus, looked at it any which way, the petition lacks merits.

30. Learned senior counsel for the petitioner had also argued that the impugned order suffers from the vice of appreciating the sufficiency and relevancy of the documents in question which is clearly beyond its mandate. To that extent, this Court is inclined to agree with the said contention. At the stage of considering the application under Order XI CPC as applicable to the Commercial Courts, whether in respect of plaintiffs' documents or those of the defendants, it is not the nature or sufficiency or relevancy of the documents which is the edifice, but the "*reasonable cause*" offered for not having disclosed the same while filing the suit or the written statement. The reason is not far to see. At that stage, the Court is not called upon to carry out a mini trial or appreciation of evidence for recording any finding etc. That stage is yet to arrive. The cause for non-disclosure at the time of filing plaint or the written statement alone is paramount. Of course, while considering the application under Order XI CPC, it is permissible for the Court to examine the documents from the point view of appreciating the reasonable cause for non-disclosure, yet, sufficiency or relevancy by itself cannot be the bedrock for the decision. The plain reading of Order XI CPC does not brook any ambiguity with the reasoning mentioned above. If the Legislature, in its wisdom, thought it fit to include any such parameter, surely the said intention would have been made clear and unambiguous. This Court is unable to appreciate any such deviation.



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31. The contentions of the learned counsel for the respondent that there was a great delay in filing the application in the context of the written statement having been filed by the petitioner on 27.10.2023 and the issues having been framed on 21.05.2024 or the order dated 05.07.2024 of the learned Division Bench in FAO(COMM) 87/2024 is concerned, though the same may have an overall bearing on the conduct of the petitioner/defendant, however, as observed above, the primary issue to be considered by a Court is in appreciating as to whether any reasonable cause has been shown. That apart, the term “*reasonable cause*” is at a lower threshold of proof than “*good cause*”. Since no such reasonable cause has been shown, this Court is not inclined to interfere in the impugned order.

32. *Ab supra*, the petition being bereft of any merits, is dismissed, however, without any order as to costs.

33. Pending applications also stand disposed of.

**TUSHAR RAO GEDELA
(JUDGE)**

JANUARY 29, 2026/rl