



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
(ARISING OUT OF SLP (C) NO. 23417 OF 2024)

RELIANCE INDUSTRIES LIMITED

...APPELLANT(S)

VERSUS

NTPC LIMITED

...RESPONDENT(S)

J U D G M E N T

1. Leave granted.
2. The present appeal arises out of an order of the Bombay High Court¹ in a Commercial Suit redacting certain portions of an Examination-in-Chief affidavit dated 24th February, 2015 (1st Evidence Affidavit) and Examination-in-Chief affidavit dated 10th August, 2016 (2nd Evidence Affidavit) of defendant witness Mr. B.K. Ganguly.
3. *Facts:* Facts relevant for disposal of this appeal are that National Thermal Power Corporation Ltd. ("NTPC Ltd."), plaintiff in the suit published a Request for Qualification (RFQ) inviting prospective bidders to submit proposals for supply of natural gas to its power plants. Appellant, Reliance Industries Ltd. ("RIL"), submitted its financial proposal following

¹ In Commercial Suit No. 189 of 2021 dated 22.08.2024

which a Letter of Intent (“LOI”) dated 16th June, 2004 was issued by NTPC to RIL which was accepted by the latter subject to the terms of the draft Gas Sale and Purchase Agreement (“GSPA”) to be negotiated and finalized.

4. Due to non-compliance of the obligations arising out of the LOI, NTPC Ltd. filed a suit for declaration that there exists a binding contract for supply of natural gas. In other words, a suit for specific performance of contract for supply of 132 trillion BTU of natural gas for a period of 17 years on the premise that the terms of contract incorporated in the LOI were unconditionally accepted by RIL.

5. The following facts would reveal that the power of the RIL to litigate and obstruct progress of the suit seems unlimited. There is no dearth of financial resources, no obligation to aid and assist the court to cope with pending backlog of cases, perhaps it is lucrative for RIL to raise some objection or the other at every stage and when the trial court rejects it, the appellate and special leave jurisdictions open up. This litigation has multiple seasons laden with many episodes. For the disposal of this appeal, it is however sufficient to refer to the orders that have a direct bearing on the issue arising for our consideration.

6. *First Round of Litigation:* The first round commences with RIL filing Chamber Summons No. 201 of 2010 for discovery and inspection of internal documents of NTPC in relation to discussions regarding

finalization of GSPA as well as the internal meetings of NTPC. On 20th February, 2014, the High Court dismissed the Chamber Summons on the ground that the documents for discovery and inspection were not at all relevant for deciding whether there was a concluded contract between the parties. The following observation is relevant;

“25. ... A perusal of the schedule to the chamber summons, it clearly indicates that the discovery sought in respect of the documents described in the schedule is totally vague and is also by way of fishing enquiry. In my view none of these documents, would be relevant for the purpose of deciding the issue already framed as to why the Letter of Intent issued by the plaintiff and accepted by the defendant is a concluded contract or not.”

7. As regards the delay in filing the chamber summons, High Court sternly noted, *“This chamber summons is pending for last four years for hearing and final disposal. Defendant has not disclosed any reasons as to why there was gross delay in filing his application for disclosure”*. Despite these observations, RIL filed an appeal and this came to be dismissed by Division Bench on 20th March, 2014 noting that the principal issue regarding the conclusion of contract between the parties was to be determined on the basis of documents produced by parties and not the internal notings/correspondences, which were irrelevant. In its own words, the High Court observed;

“14. ...So far as non-disclosure of a document as required under Order 11 Rule 12 of the CPC is concerned the consequence is provided for in Order 11 Rule 21 of the CPC. It is not open to a party to keep making repetitive applications so as to frustrate the progress of the trial The question whether there was a concluded

contract between the parties will be determined on the basis of the documents which parties have already produced in the suit. Learned Trial Judge has held that principal issue in the suit will accordingly be decided on the basis of the documents already produced by the parties and the internal noting or correspondence between officers of the plaintiff company are not relevant

One more fact to be noticed is that the suit is pending since 2006 Written statement was filed by the appellant defendant in October 2007. The plaintiff had filed the affidavit of documents on 7 December 2007. The amendment to the written statement had prima facie nothing to do with the merits of the controversy of the suit as filed initially. The defendant knew in December 2007 which documents the plaintiff had not produced, of which discovery is now sought, as they pertained to the period July 2004 to November 2005. Therefore, the learned trial Judge is correct in taking a view that there was gross delay in filing an application for discovery...”

8. *Second Round of Litigation:* With the dismissal of the attempt to seek discovery and inspection of internal documents of NTPC, the trial seemed to have progressed a bit and the plaintiffs' evidence concluded and RIL submitted Mr. B.K. Ganguly examination-in-chief affidavit (1st Evidence Affidavit) on 24th February, 2015. Within two months, RIL proceeded to file Chamber Summons No. 629 of 2015 seeking leave to produce additional documents annexed to 1st Evidence Affidavit which included internal documents of RIL. It took almost one year for this Chamber Summons to be dismissed by the High Court on 29th January, 2016, holding;

“11.9 In my view, the cause now sought to be shown/explained by RIL for not producing their internal documents which were admittedly in RIL's possession since 2004-2005 despite RIL having filed three earlier Affidavits of Documents dated 31st October, 2007, 3rd December, 2009 and 23rd January, 2010 is

untenable and baseless. As pointed out hereinabove, at no point of time RIL in its Chamber Summons No 201 of 2010 or its Appeal filed from the Order dismissing the Chamber Summons has made even a whisper that RIL wanted NTPC to produce its internal documents on a reciprocal basis...”

“15. ...That the internal documents/correspondence exchanged by and between the official of RIL cannot be of any assistance to RIL in establishing what is alleged by it and recorded in paragraph 64 above. The question before the Court is whether there was a concluded contract between NTPC and RIL. This question is essentially a matter of interpretation of the terms of bargain which are reflected in writings executed by the parties... An internal document of a party unilaterally prepared and not shared with the other, cannot possibly throw any light on what the parties together meant. It has, thus, no relevance for establishing or proving the existence or otherwise of a concluded contract...”

9. High Court had no hesitation in holding that, in so far as the evidence relating to *inter se* notings/correspondences (Documents 1 and 3 to 18) were concerned, the same was irrelevant and documents were not to be taken on record. Resultantly, the High Court allowed the Chamber Summons only to the extent of granting leave to RIL to produce documents listed at Item 2, 19 to 21 and 22 to 24 in the Schedule of Chamber Summons.

10. RIL challenged the above-referred order by filing a Special Leave Petition (C) No. 8260/2016 which came to be dismissed as withdrawn on 18th July, 2016.

11. *Third Round of Litigation:* Less than a month after the withdrawal of the SLP on 10th August, 2016, RIL submitted B.K. Ganguly 2nd Evidence Affidavit. NTPC filed a motion before the High Court seeking redaction of

portions of the 1st and 2nd Evidence Affidavit as internal documents were consistently held by Courts as inadmissible. High Court, by its order dated 31st March, 2017, decided admissibility of 1st and 2nd Evidence Affidavits by redacting certain portions and at the same time, retaining some other parts of the Evidence Affidavits². Subsequently, certain typographical errors in order dated 31st March, 2017 were also corrected by the Hon'ble Court vide Order dated 13th April, 2017. The Review Petition, assailing the orders dated 31st March, 2017 and 13th April, 2017 filed by NTPC were dismissed on 2nd February, 2018³. Herein, the Hon'ble Court noted that complete foreclosure of oral evidence would not sub-serve the ends of justice and thus, even if documents were held as irrelevant, oral evidence qua such documents could still be deposed.

² The relevant portion of the judgment is as follows,

"At an abstract level let me consider this in context of what is described as 'an internal document'. A witness may well say that he sent an email on a particular subject to his colleague or co-worker...But there is a distinction between the document itself or even the fact of the document itself and the fact of a person having written that document, read that document or having sent it.

In the course of this trial, RIL may well be entitled to show that there were very many discussions at different times on different aspects of the matter. Their internal emails may be irrelevant but the fact that there were discussions is not excluded....I believe it would wholly embarrass and compromise the trial of the Suit if large swathes of oral evidence to the knowledge of the witness were to be shut out in this fashion. Mr Kadam will of course be able to cross examine Mr Ganguly thoroughly (and knowing him, he will do so cautiously) on all this, but I do not think that I can permit him the additional benefit of not being required to cross-examine Mr Ganguly at all, which is what his submission more or less amounts to today."

³ The relevant portion of the order is as follows,

"As a general principle, I am always reluctant to exclude from the evidentiary record oral testimony that is not shown to be otherwise inadmissible. An attempt to curtail testimony so as to fashion it to some pre-determined end is unacceptable. As I noted in my order under review all trials are required to be even-handed. The submission before me today, if allowed, I am certain would result in an extremely lopsided trial."

12. NTPC filed Special Leave Petition (Civil) Nos. 11741-11742 of 2018 challenging the above-referred orders dated 31st March, 2017 read with order dated 13th April, 2017 and review order dated 2nd February, 2018.

13. By a detailed judgment dated 28th February, 2019, this Court allowed the appeals and set aside the judgment of the High Court in so far as it permitted oral evidence to be adduced with respect to content of documents or correspondence already held to be irrelevant. It is important to refer to what exactly this Court held as much arguments were advanced on what was permitted and what is not permitted by this Court. The relevant portion of the Judgment of this Court is as follows;

“The orders passed by the trial Court on the aforesaid aspect had attained finality. The Special Leave Petition was also dismissed by this Court.

During the course of the trial, the defendants made another attempt to get rid of the aforesaid previous orders and succeeded this time in adducing the oral evidence of the same very documents which were excluded from evidence.

The High Court has opined that internal e-mails may be irrelevant and the fact that there were discussions is not excluded either in law or by previous orders. It has also been observed that communication must necessarily stand excluded but the witness can depose orally that meeting was held and what transpired in those meetings.

We have heard learned senior counsel appearing for the parties. It was urged by Shri Tushar Mehta, learned Solicitor General appearing on behalf of the appellant that in view of the previous orders, the High Court could not have permitted the oral evidence of the same very document which had been precluded from acceptance in evidence and orders have attained finality and are binding on the trial Judge. They operate as res judicata and are binding on the trial Court at a subsequent stage. Thus, what was directly precluded is being done indirectly by adducing

the oral evidence on the ground that the witness was party to the internal discussions made in the office of the defendants as well as plaintiffs. Thus, the impugned order is devoid of justification and being illegal, it deserves to be set aside.

Shri Abhishek Manu Singhvi and Mr Shyam Divan, learned senior counsel on behalf of the defendants-respondents submitted that order is interlocutory and discretionary one and the learned trial Judge has done great labour while scoring out certain portions of the affidavit out of the evidence which was barred as per previous orders and has permitted in evidence only that portion of affidavit which could have been considered and admitted in evidence. No interference was called for in the discretionary order passed by the trial Judge as to the production of evidence and ultimately the question of the relevance of the evidence and proof has to be gone into at the time of final decision.

We are of the considered opinion that it was not open to the plaintiffs to adduce evidence allowed by the impugned orders in view of the bar created by the orders passed on 20.02.2014 and 29.1.2016. In our considered opinion, in view of the fact that previous orders have attained finality in appeal etc as such they are binding upon trial Court and during the course of trial they cannot be re-opened. It was not open for learned Single Judge to permit oral evidence with respect to the contents of the documents which have not to be taken into consideration as per aforesaid orders.

However, Mr Shyam Divan learned senior counsel contended that the evidence with respect to the part played by the witness and what transpired in the meeting which ultimately led to the correspondence between the plaintiff and defendant, may also be excluded.

In our opinion, the submission is not tenable. The correspondence between the plaintiff and the defendant has not been excluded and even as per previous orders that have been held to be relevant and admissible. Intra plaintiff or internal defendant discussion once have been held to be irrelevant and documents were not taken on record, obviously, the parties cannot be permitted to adduce oral evidence as to them by an indirect method.

It was also contended that the witness B K Ganguly was party to the meeting and he was competent to depose as per

Section 60 of the Evidence Act as to what transpired after receiving communication from the plaintiff. In our opinion, we need not go into the aforesaid question. We are deciding the case only on the limited question whether, in view of previous orders, the trial Court could have re-opened the issue by the indirect method as has been done and permit the evidence of internal correspondence in the office of the defendant as parties have already been precluded to adduce such documentary evidence. Obviously, the orders are binding on the trial Judge, the matter was decided also by the Division Bench and affirmed by this Court.

We have no hesitation to set aside the order so far it permits oral evidence to be adduced with respect to the contents of the documents, email etc. and what transpired in the meeting of officer/employer of defendants or the correspondence which has already been held to be irrelevant."

14. Thus, this Court ruled that it was not open for the High Court to permit oral evidence with respect to the contents of the documents which have not been taken on record. That once the internal discussions were held to be irrelevant and documents were refused to be taken on record, the parties could not be permitted to adduce oral evidence qua said documents. This is the decision of this Court between the same parties. The mandate of Supreme Court order is that; (i) the evidence as to the *inter se* noting or correspondence between the officers was irrelevant, (ii) the documents which were not between the plaintiff and the defendant were not to be taken on record, (iii) the defendant made an attempt to get rid of the previous orders and succeeded in adducing the oral evidence of the very same documents which were excluded from evidence and finally (iv) that

though internal e-mails may be irrelevant, the fact that there were discussions was not excluded and though communication must necessarily stand excluded, the witness can depose orally that meeting was held and what transpired in those meetings.

15. Eventually, the order passed by the High Court was set aside to the extent that it; (i) permitted oral evidence to be adduced with respect to the contents of the documents/e-mails etc, (ii) what transpired in the meeting of officers/employee of defendant, and (iii) the correspondence which has already been held to be irrelevant.

16. Following the mandate of this Court, the High Court proceeded to examine portions of 1st Evidence Affidavit dated 24th February, 2015 and the 2nd Evidence Affidavit dated 10th August, 2016 which fell within the ambit of the matters expressly excluded by the Supreme Court. The High Court examined the affidavits in detail to see if they passed the test laid down by this Court. It will be useful to reproduce the exercise undertaken by the High Court as it is, in our opinion, a meticulous scrutiny of the issue. The consideration is as follows;

“21. On the aforesaid touchstone, if the admissibility of yellow washed portions of the affidavit in lieu of examination in chief (X-1) is considered, the following position emerges.

(I) Paragraph No 12

Liable to be redacted as it refers to an internal e-mail dated 8th May 2003 addressed by Mr. Afsir Ahmad to DW-1.

(II) Paragraph No.23

The first sentence of paragraph No.23 beginning with the words, "By on email" is liable to be redacted as it refers to internal e- mail dated 13th November 2003 addressed by DW-1.

The penultimate sentence beginning with "I state that at this stage, ----to----attention of the team" deserves to be retained as it refers to the state of mind of the witness at the relevant point of time. Though the earlier portions of paragraph No.23 are redacted, being internal communications, this part can be permitted to be adduced in evidence as a fact then perceived by DW-1 and the state of his mind.

(III) Paragraph No 30

Liable to be redacted as it refers to an internal e-mail addressed by DW-1.

(IV) Paragraph No 35

Deserves to be retained as it is again a matter of perception of the import of the letter dated 12th August 2004 addressed by the plaintiff to the Defendant.

(V) Paragraph No 45

Liable to be redacted as it refers to an internal e-mail dated 17th September 2004.

(VI) Paragraph No 73

Liable to be redacted as it refers to an internal communication addressed by DW-1.

The submission on behalf of the defendant that the summary of the discussion held in the meeting dated 30th July 2005 deserves to be admitted as DW-1 was present in the meeting and, thus, witnessed what transpired therein and was also the author of the said summary forwarded by e-mail, does not merit countenance as the said exercise clearly falls in the mischief of bringing the contents of the documents on record by way of oral evidence in an indirect manner.

(VII) Paragraph No. 74

Liable to be redacted as it refers to internal communications received and addressed by DW-1.

(VIII) Paragraph No.76

Liable to be redacted as it refers to an internal communication addressed by DW-1.

22. Yellow washed portions in the further affidavit in lieu of examination in chief of DW-1 (X-2)

(A) Paragraph No.3

Deserves to be retained. Though the first sentence of paragraph No 3 refers to the internal meeting convened by DW-1 yet, the succeeding sentence refers to the then perception of the situation by DW-1 and latter's then state of mind. The later sentences in the said paragraph refer to the correspondence exchanged between the defendant and plaintiff. The said letter dated 22nd November 2003 is also marked in evidence as Exhibit P-1. Therefore, to make a complete sense of the matters deposed to by DW-1, it is necessary to retain the first two sentences of paragraph No.23 though there is a reference to an internal meeting.

(B) Paragraph No 9

The portion beginning with the words, "Broad consensus seemed to emerge as below and the contents of clauses I to XVI that follow, all deserve to be redacted.

The reference to the outcome of the meeting, which was purportedly recorded in an e-mail dated 17th September 2004 addressed by Mr Afsir Ahmad to various officers of the defendant, including DW-1 and which also formed a part of paragraph No 45 of the affidavit in lieu of examination in chief (X-1), has already been ordered to be redacted. Defendant cannot be permitted to bring the same on record in an indirect manner by asserting that there was a broad consensus.

(C) Paragraph No 10

'The first sentence beginning with the words, "After the aforesaid meeting----to----email sent thereafter" is liable to be redacted as it clearly falls within the excluded part.

(D) Paragraph No 14

The yellow washed portion beginning with the words, "I had discussions with Mr R P Sharma and major issues under points I to XII", deserves to be redacted as it constitutes an attempt to indirectly bring the contents of the documents, the production of which was disallowed and which was sought to be tendered in evidence as a part of paragraph No. 73 of the affidavit in lieu of examination in chief (X-1), which has also been ordered to be redacted.

(E) Paragraph No.15

The yellow washed portion beginning with the words, "At the said meeting and the clauses I to VI" is liable to be redacted for the same reason as indicated in respect of paragraph No 14. Moreover, the portion of paragraph No. 74 of the affidavit in lieu of examination in chief (X-1) which refers to the said meeting dated 18 August 2005 and under which the contents of the documents were sought to be brought on record, has already been ordered to be redacted.

(F) Paragraph No 16

The yellow washed portion beginning with the words, "Major issues in respect of the draft GSPA which were discussed and clauses I to VI that follow" deserves to be redacted as that constitutes an attempt to bring the contents of the documents expressly disallowed and forms part of the portion of the paragraph No 76 of the affidavit in lieu of examination in chief (X-1), which has been ordered to be redacted.

The yellow washed portion of the last part of paragraph No 16 beginning with the words, "and the same was based on the discussions" deserves to be retained to make a complete sense of the facts deposed to by DW-1 in respect of the presentation made on 7th October 2005 as the said fact of presentation and its record in the form of 'Presentation Outline', do not amount to internal communication. Therefore, its admissibility cannot be questioned.

23. Ordered accordingly.

24. I have crossed out of yellow marked portions of the affidavit in lieu of examination in chief (X-1) and further affidavit in lieu of examination in chief (X-2), in red. Those portions of the affidavits stand redacted.

25. The defendant shall prepare a fresh copy of affidavit in lieu of examination in chief (X-1) and further affidavit in lieu of examination in chief (X-2) with the redacted portions shown as struck through to rule out the possibility of any confusion or ambiguity as to the evidence which is permitted to be adduced. Such fresh copies of the affidavits (X-1 and X-2) be filed within a period of three weeks."

17. It is evident from the above examination that the High Court has not redacted every portion of the 1st and 2nd Evidence Affidavit that plaintiff-

NTPC had sought. Instead, the High Court scrutinized the affidavits in detail, examined paragraph after paragraph to see if any portion fell foul of the test laid down by this Court. As regards the portions retained by the High Court, the same are as follows - In 1st Evidence Affidavit, paras 3 to 11, paras 13 to 22, paras 24 to 29, paras 31 to 44, paras 46 to 72, para 75, paras 77 to 104 have been fully retained. For instance, in so far as para 23 is concerned, the High Court redacted portions which constituted internal communications, however, the later portion was permitted to be adduced as evidence of fact perceived by DW-1. Similarly, paragraph 35 was retained fully, as it indicated the witnesses' perception of letter dated 12th August 2004. Apart from these two, there are certain other statements in the 1st Evidence Affidavit that the High Court has chosen to retain without any redaction.

18. In so far as the 2nd Affidavit is concerned, paras 3 to 8, paras 11 to 13 have been fully retained. Moreover, portions of paras 9, 10, 14, 15 and 16 have also been retained. In so far as para 3 is concerned, the High Court observed that even though it refers to internal meetings convened by DW-1, as succeeding sentence refers to perception of the DW-1 of the situation, it must be retained. We agree.

19. Having considered the matter in detail, we are of the opinion that High Court has neither committed any error in understanding the directions

of this Court nor in applying its mandate to the 1st and 2nd Evidence Affidavits.

20. Before us, an attempt was made to reopen the whole issue by referring to Section 60 of the Indian Evidence Act, 1872, qua leading oral testimony and it was also submitted that the High Court had exceeded its jurisdiction in redacting certain portions of the affidavit. This is exactly the argument that was advanced before this Court, and having considered the matter in detail, the Court issued directions that we have extracted for ready reference and also restated them for clarity. We are neither in a position to revisit the judgment and order passed by this Court on 28th February, 2019, nor inclined to do so. Suffice it to say that the High Court was fully justified in arriving at its conclusions. We have no hesitation in upholding the judgment and order of the High Court.

21. In conclusion, it is compelling for us to note that the suit filed by NTPC way back in 2005 has not progressed much. At every stage there has been obstruction. Stage-1 relating to chamber summons for discovery and inspection took 4 years to conclude. Stage-2 relating to chamber summons for production of internal documents took more than a year and Stage-3 relating to redaction of inadmissible statements commencing from 2016 concluded with the judgment of this Court in 2019, took full three years. The implementation of the direction of this Court could have been concluded with the order of the High Court dated 22.08.2024 but the

appellant filed the present appeal which we are dismissing today. In all, two decades have passed by and the suit is still at the stage of evidence.

22. On multiple occasions, Courts have directed the suit to be taken up and disposed of expeditiously. In 2019, this Court directed;

“We are shocked that trial has been delayed for no good reason. It is pending since 2006, for more than 13 years. It is a commercial suit of 2006. We request the trial Judge to conclude the trial within the outer limit of nine months from today.”

Seven years have passed since this Court directed the suit to be disposed of in nine months. It is compelling for us to reiterate such a direction and request the High Court to take up and dispose of the suit as expeditiously as possible. High Court will take note that permitting a party to a suit to prolong the litigation is also a sad reflection of the way courts conduct their proceedings.

23. For the reasons stated above, the appeal is dismissed with costs quantified at Rs. 10 lakhs payable by the appellant-RIL to Supreme Court Advocates on Record Association. The amount shall be paid within a period of five weeks from today.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[ALOK ARADHE]

**NEW DELHI;
AUGUST 14, 2026.**