

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 24TH DAY OF JULY 2017

THE HON'BLE DR. JUSTICE ANITA SUMANTH

A.No.2556 of 2017

IN

C.S.No.405 OF 2014

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Rubinetterie Bresciane Bonomi SpA,
Via M.Bonimi 1, 25064, Gussago, Brescia (Italia)
Through its authorized representative
Mr.Federico Salatini ...Plaintiff

Vs

M/s.Lehry Instrumentation & Valves Pvt. Ltd.,
No.78/ Old No.51, Sembudoss Street,
Parrys, Chennai-600 001, Tamilnadu
Through its Managing Director ...Defendant

A.No.2556 of 2017:-

M/s.Lehry Instrumentation & Valves Private Limited,
No.78/ Old No.51, Sembudoss Street,
Parrys, Chennai-600 001, Tamilnadu
Through its Managing Director ..Applicant/Plaintiff

Vs

Rubinetterie Bresciane Bonomi SpA,
Via M.Bonimi 1, 25064, Gussago, Brescia (Italia)
Through its authorized representative
Mr.Federico Salatini ..Respondent/Defendant

Application praying that this Hon'ble Court be pleased to allow the plaintiff to file the following documents are additional documents and i may be allowed to lead the said documents during my evidence along with an additional proof Affidavit supported by a 65B Certificate required under the Evidence Act.

<u>SI.NO</u>	<u>PARTICULARS</u>
1.	Relevant extracts of data provided by M/s infodrive through a web link vide email dated 29.05.2014

<u>SI.NO</u>	<u>PARTICULARS</u>
2.	Extracts of Indian import data of the Defendant received from Infodrive
3.	Six invoice raised by the plaintiff from 15.12.2011 to 29.10.2012
4.	Chart showing total turnover of the Defendant of valve type 1500, comparing the total turnover of all the valves and valve type 1500 from the year 2008 to 2013
5.	Chart Showing the drop in the percentage of turnover with respect to ball valves for the years 2008-2013 with respect to imports from the plaintiff with respect to 1500 series ball valves for the sizes ½ inches to 4 inches
6.	Correspondence exchanged between the plaintiff and M/s.Instaquesst through emails
7.	Printouts of the reports submitted by the Indian Lab as well as Italian Lab received by Plaintiff through email.
8.	Plaiintiff's report dated 16.12.2014 maintained in its records
9.	Letter dated 11.07.2014 issued by one of the clients of plaintiff in India namely M/s Manikant Sakarlal, along with list of some of the invoices and certificate nos. Issued by plaintiff to M/s. Manikant Sakarlal
10.	Copies of some of the certificates issued by the Plaintiff to the Defendant
11.	Copy of email dated 05.05.2014 along with its attachment, a counterfeit catalogue of Plaintiff
12.	Copy of the letter dated 27.05.2014 by M/s Fluid Valve Company along with copy of livoice raised by Defendant upon the abovementioned company received through email
13.	Copies of relevant emails/correspondence exchanged between the parties.
14.	Copies of the order received from the Defendant through email and relevant correspondence exchanged between the parties through various emails
15.	MO1-CD containing data.

This Application coming on this day before this court for hearing the court made the following order:

This application is filed in terms of Order VII Rule 14 of the Civil Procedure Code 1908 (in short 'CPC') seeking leave of the Court to file various additional documents and to lead the same during evidence along with additional proof affidavit duly supported by certificate in terms of Section 65B of the Evidence Act.

2. The suit has been filed alleging various acts of passing off by the respondent, whereby counterfeit products using the Trade Mark of the applicant company were being sold in India. 17 documents marked as Exhibit P 1 to P 17 have been filed along with the plaint and the trial is underway. While this is so and in the course of cross examination, the applicant/plaintiff claims to have realised that various documents that are necessary to place on record facts critical to the suit have been omitted to be filed. The documents in respect of which the order of admission is sought are:

S.No	Particulars
1	Relevant extracts of data provided by M/s.Infodrive through a web link vide email dated 29.5.2014.
2	Extracts of Indian import date of the Defendant received from infodrive.
3	Six Invoices raised by the Plaintiff from 15.12.2011 to 29.10.2012
4	Chart showing total turnover of the Defendant of valve type 1500, comparing the total turnover of all

S.No	Particulars
	the valves and valve type 1500 from the year 2008 to 2013.
5	Chart showing the drop in the percentage of turnover with respect to ball valves for the years 2008-2013 with respect to imports from the Plaintiff with respect to 1500 series ball valves for the sizes 1/2 inches to 4 inches.
6	Correspondence exchanged between the Plaintiff and M/s.Instaquest through emails
7	Printouts of the reports submitted by the Indian Lab as well as Italian lab received by Plaintiff through email
8	Plaintiff's report dated 16.12.2014 maintained in its records
9	Letter dated 11.07.2014 issued by one of the clients of Plaintiff in India namely M/s. Manikant Sakarlal, along with list of some of the invoices and certificate nos. issued by Plaintiff to M/s.Manikant Sakarlal
10	Copies of some of the certificates issued by the Plaintiff to the Defendant
11	Copy of email dated 05.05.2014 along with its attachment, a counterfeit catalogue of Plaintiff
12	Copy of the letter dated 27.05.2014 by M/s.Fluid Valve Company along with copy of invoice raised by Defendant upon the above mentioned company received through email.
13	Copies of relevant emails/correspondence exchanged between the parties
14	Copies of the order received from the Defendant through email and relevant correspondence exchanged between the parties through various emails.
15.	MO1-CD containing data

3. Mr. Muthukumarasamy, learned Senior Counsel appearing for the applicant would submit that it is vital that the said documents sought to be admitted are available for adjudication of the issues by the trial Court. He would state that the non filing at the original instance was on

account of the fact that the plaintiff is based in Italy and was coordinating with the counsel in India through the counsel in Italy for various matters relating to the suit. The distance and consequent difficulty in logistics was, according to learned senior counsel, the reason that the omission had occurred.

4. Learned senior counsel would further state that all the documents now sought to be filed find reference in either the plaint, written statement or rejoinder in C.S.No.405 of 2014 or C.S.N.891 of 2015 which are connected suits being tried together. This was thus a case where, according to him, the evidence was available in the possession of the applicant and pleadings to that effect were already on record. Grave prejudice would be caused, he would state, if the documents were not admitted to be adjudicated upon.

5. Reliance was placed on the decision of the Madurai Bench of the Madras High Court in *S.Rukmani and another vs. R.B.Vasudev and others* (copy circulated) interpreting the amendment to Orders 13 and 7 of the CPC. Amendment Act 22 of 2002 introduced a new sub rule, sub rule (3) which reads as follows;

'(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in

evidence on his behalf at the hearing of the suit'.

6. Thus, sub rule (3) as it stands now, only requires that the applicant take the leave of court prior to seeking the admission of documents that have not been filed along with the plaint. The requirement of the applicant to show 'good cause' for not filing the documents along with plaint stands omitted, and this is an indicator as to the liberal view to be adopted by the court in dealing with a plea such as in the present case.

7. Stiff and serious resistance was put forth by Mr. Raman, learned Senior Counsel appearing for the respondent. He would contend that the application is nothing short of vexatious and an abuse of process of court intended solely to delay the trial. He would point out that the evidence has been substantially completed and cross examination conducted on 28.2.2017, 1.3.2017 and 3.3.2017. Suddenly, he would state, the applicant woke up in April 2017, when the matter was posted for continuation of cross examination realizing that certain documents had not been filed. The belated plea at this stage was, he would say, only to plug loop holes that had arisen in the course of cross examination when the applicant was faced with various lacunae in its evidence. He also categorically denied that reference has been made to the documents sought to be admitted now, in pleadings already on record. In summary, he would state that a completely new set of facts have been

presented which cannot be sought to be done at this stage.

8. For his part, Mr. Raman, would rely on the judgment of the Supreme Court in the case of *Bagai Construction vs. Gupta Building Material Store* ((2013) 14 SCC 1) and the Delhi High Court in *Gold Rock World Trade Ltd vs. Veejay Lakshmi Engineering Works Ltd.* (2007 SCC Online Delhi 1140) and *Polyflor Limited vs. Sh.A.N.Goenka and others* (2016 SCC Online Del 2333). He would specifically rely on paragraph 15 of the judgement of the Supreme Court extracted below;

'15. After change of various provisions by way of amendment in CPC, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the

plaintiff, still the plaintiff has not placed those bills on record. It further shows that final arguments were heard on a number of times and the judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of section 151 CPC.'

9. He would also refer to paragraphs 17 and 18 of the decision of the Delhi High Court in Polyflor Limited vs. Sh.A.N.Goenka and others extracted below:

'17. Thus, the issue is, whether in the above noted facts and circumstances, the plaintiff is entitled to grant of such leave. In the present case, the plaintiff's witness PW-1 is under cross-examination and has already undergone a substantial portion of his cross-examination. To grant leave to, and permit the plaintiff to file and lead in evidence additional documents at this stage would mean that the defendants would be put to serious prejudice. The defendants have not had the occasion to deal with the said documents. Had the documents now sought to be produced, been produced at the relevant time, i.e. at the stage of filing of the suit, or at least at the time when the issues were framed, the defendants would have had the occasion to deal with the same by making appropriate pleadings and filing its own documents to counter the reliance placed by the plaintiff on the documents in question.

18. The progress of the suit cannot be interdicted on account of the blatantly casual approach of the plaintiff. The plaintiff has not given any justifiable and acceptable explanation for not filing the said documents at the earlier stage of the proceedings. If the submissions of the plaintiff were to be accepted, it would mean that in every case, a party should be permitted to lead in evidence documents not earlier filed

and relied upon at any stage of the proceedings.'

10. The decision of the Madurai Bench of this Court in the case of S.Rukmani and others was distinguished on the ground that there was a case where the additional documents were received by the trial Court at a stage just subsequent to submission of issues which is a stage far anterior to the stage at which the documents are sought to be filed in the present case.

11. Heard learned Senior Counsel and perused the documents as well as the case law relied upon by both sides.

12. The admitted position is that the documents that are sought to be admitted at this stage of the Trial have been in the possession of the applicant all along, from prior to the time when the suit was filed. The question that begs a response is thus why the documents could not have been produced or were omitted to be produced from June 2014 till now. The question of admissibility of the documents or otherwise has to be decided solely based on the justification projected by the applicant for the non-filing at the original instance. I have perused the application in vain seeking an answer to this question; but find the application silent, containing no justification as to why the documents could not be produced till date. This

assumes importance particularly in view of the admitted position that the documents were in the possession of the applicants all along.

13. Though Mr. Muthukumarasamy would orally rely on the factum of distance between the client in Italy and counsel in India and consequent gaps in communication that ensued, this fact finds no mention in the application. In fact, at para 5 of the application, the applicant would state thus:

'I say that the plaintiff is based in Italy and was co-ordinating with their counsels in Italy and India for pursuing the present suit. The plaintiff also exchanged various documents with their counsels which are already on record before this Hon'ble Court.'

The applicant thereafter goes on to detail the various documents that were omitted to be annexed to the plaint. A passing reference is made to the fact that the non-filing of the documents at the time of admission was 'unfortunate' and 'inadvertent'. Such a casual attitude cannot be countenanced. Even if one were to take into consideration the oral submissions of the learned senior counsel to the effect that the distance between the location of the client and the counsel did lead to the omission, it was incumbent upon the applicant to have made a serious attempt to explain the non-filing by way of pleadings. The situs of the party is, no doubt relevant to decide an application of this nature, but cannot be called to come to the aid of an

applicant who is seen to be a rather indolent in its approach to its legal remedies.

14. Yet another factor that weighs consideration is that in dealing with an application in terms of Order 7 Rule 14 of C.P.C., an important factor is the stage of trial at which the admission is sought. In S.Rukmani's case, the request was made pursuant to the framing of issues which is a preliminary stage of trial. The decisions of the Delhi High Court, on the other hand deal with requests for filing of additional documents at the stage of cross-examination, as in the present case, which is at a more advanced stage of Trial. As such, the latter decisions would be more appropriate in the facts and circumstances of the present case.

15. Before the Trial Judge, the process of cross examination has been continued over three sittings. It is only thereafter that the deponent realizes the need for filing additional evidence. To permit the applicant to do so would seriously prejudice the respondent quite apart from setting the trial back several stages.

16. In my view, the above circumstances reveal that the conditions precedent to grant of leave of the Court to admit additional evidence have not been satisfied in the present case. In view of the admitted position that the applicant was aware of and in possession of the documents all along, the absence of any justification for the non-

production of the documents at the time of filing of plaint and the absence of any justification in the pleadings to the effect that the non-filing was in spite of due diligence exercised by the plaintiff, I am left with no alternative but to reject this application. The application is dismissed. No costs.

Sd/-A.S.M.J

24.07.2017

//Certified to be a true copy//

Dated this the th day of 2017.

EM/27.07.2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.