

IN THE HIGH COURT OF JUDICATURE AT MADRAS
ORDER RESERVED ON: 14.03.2018

ORDER PRONOUNCED ON: 22.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Application No.8372 of 2017
in CS No.1128 of 2007

M/s.Hindustan Unilever Limited
No.101, Santhome High Road,
(Entrance From South Canal Bank Road),
Chennai 600 028.

...Applicant

Versus

1. Reckitt Benckiser (India) Ltd.,
227, Okhla Industrial Estate,
Phase III, Okhla, New Delhi 110 020
Rep by its Managing Director,
Chander M.Sethi

2. MAA TV Network Limited,
H.No.6-3-66/B,
MAA Chambers,
Behind Topaz Buildings
Panjagutta, Hyderabad.

... Respondents

PRAYER: This Application has been filed under Order XIV Rule 8 of the Original Side Rules read with Order VII Rule XIV (3) and Section 151 of the Civil Procedure Code, seeking to permit the applicant to produce and file the documents mentioned in the list of documents.

For Applicant : Mr.R.Parthasarathy

For Respondents : Mr.R.Saravanakumar

ORDER

This application has been filed seeking to produce the documents under Order VII Rule 14 (3) of the Code of Civil Procedure read with Order XIV Rule 8 of the Original Side Rules. The suit in CS No.1128 of 2007 is one for permanent injunction restraining the defendants from telecasting the offending comparative advertisement in Telugu or Tamil languages or from disparaging the plaintiff's bleach based toilet cleanser Domex in any other manner whatsoever and for other reliefs, including a claim for damages of Rs.40,00,000/-. The plaintiff claims to be a reputed manufacturer of domestic products, one of its products is a toilet cleanser called Domex, which is bleach based. According to the plaintiff, the 1st defendant while advertising its toilet cleaner viz., Harphic had disparaged the toilet cleaner manufactured by the plaintiff by name Domex, which gave raised to the present suit being instituted by the plaintiff.

2. The defendants entered appearance and filed a written statement.

This Court had framed various issues and referred the matter for trial to the learned Additional Master. At trial, P.W.1 was examined on the side of the plaintiff, the said witness was also cross-examined. After the said cross-examination, the present application has been filed by the plaintiff seeking permission to produce three documents, the documents that are sought to

be produced are as follows:

<u>Date</u>	<u>Description</u>
12.02.2007	Study completed by Shikshana Prasarak Mandali Ram Narain Ruia College on the efficacy of Harpic.
18.02.2007	Study completed by Shikshana Prasarak Mandali Ram Narain Ruia College on the efficacy of Domex.
12.12.2008	A study by Unile R&D Port Sunlight to understand the extent and limitations of hydrochloric and disinfection performance and understand the impact of time scale as a soil on that performance.

3. According to the affidavit filed in support of the application, these documents are necessary to prove that the respondent/defendant had generically disparaged the applicant/plaintiff's products, by stating that bleach based cleansers are not effective in removing lime-scale deposit and that they do not have effective germ kill properties. The scientific studies with the applicant wishes to file, according to the applicant, would prove that the claim that bleach based cleansers are not effective in removing lime-scale deposit is false. The delay in filing the documents is sought to be explained by the applicant, contending that P.W.1 was a legal officer and she did not possess the technical knowledge. The exact reasons that are set out in the affidavit for the delay in filing the documents reads as follows:

“The same were not filed earlier since the plaintiff was assimilating the evidence required to be adduced and the same took some time and could not filed earlier, if the above documents are not allowed to be taken on record, the

applicant will be put to grave prejudice and irreparable hardship.”

4. This application is vehemently resisted by the respondents/defendants, a detailed counter affidavit has been filed setting out the questions put to P.W.1 in cross-examination and answers given by her. Based on the above, it is contended by the respondents/defendants that these documents, which were available with the plaintiff even earlier have been produced belatedly, only with a view to take the defendants by surprise and hence in the absence of any valid reasons, the plaintiff is not entitled to produce the documents at its whims and fancies. The provisions of Order VII Rule 14 of the Code of Civil Procedure are also invoked by the defendants to contend that the documents referred to cannot be allowed to produce.

5. The learned counsel appearing for the respondents/defendants would also rely upon the following judgments of the *Delhi High Court in Asia Pacific Breweries v. Superior Industries*, reported in **158 (2009) DLT 670**, equivalent to **Manu/DE/0261/2009; Haldiram (India) Pvt. Ltd., v. Haldiram Bhujiawala**, reported in **2009 ILR (5) Delhi 503** equivalent to **Manu/DE/4497/2009 and Gold Rock World Trade Ltd., v. Veejay Lakshmi Engineering Works Ltd.**, reported in **ILR (2007) Supp (5) Delhi**

18 equivalent to **MANU/DE/8444/2007**, to contend that it is for the person seeking to produce the documents, to show that the existence of those documents were not within its knowledge or power and the very existence of the documents were discovered only at latter point of time, hence those documents could not be produced earlier.

6. The sum and substance of the decisions of the Delhi High Court relied on by the learned counsel is that, the applicant who seeks leave to produce documents belatedly must satisfy the Court that the said documents were not earlier within their knowledge or could not have been produced at the appropriate time, despite due diligence. The learned counsel appearing for the respondents would also contend that the power under Order VII Rule 14 (3) to permit production of documents has to be used sparingly and the same cannot be mechanically invoked by persons, with a view to fill-up the gaps in the evidence.

7. Ms.Revathi M.Kannan, learned counsel appearing for the applicant would however draw my attention to the judgment of this Court in **Kasthuri and others v. C.Mohan and others**, reported in **2007 (1) LW 560**, wherein this Court had noticed the difference between the language in the provisions of Order VII Rule 14 Sub Rule 3, after the amendment by Act 46 of 1999 and

the provisions of Order XIII Rule 1 and 2 (1), before the amendment had held that in fact the amended provisions make the provisions regarding reception of documentary evidence much more liberal than what it was before the amendment. Pointing out that even the words 'good cause' that appeared in Order XIII Rule 2 (1), as it stood before the amendment or absent in the newly introduced Sub Rule 3 of Rule 14 of Order VII, this Court had held that the power to receive the documents can be exercised more liberally. Referring to ***Madanlal v. Shyamlal***, reported in **2002 (1) SC 535**, wherein the Hon'ble Supreme Court had held that the power under Order XIII Rule 2 of the Code of Civil Procedure as it stood before the amendment should be exercised liberally and that 'good cause' requires a lesser degree of proof than that of 'sufficient cause'. In fact as rightly pointed out by Hon'ble Mr.Justice V.Ramasubramaniam, the term good cause is also not there in the amended Sub Rule 3 of Rule 14 of Order VII of the Code of Civil Procedure. Therefore, the power to receive documents is not even circumscribed by the term such as 'good cause' that was found in Order XIII Rule 2 of the Code of Civil Procedure, as it stood prior to the amendment.

8. The sum and substance of the conclusions of the learned Judge is that on a comparative reading of the provisions of the Code of Civil Procedure, regarding the receipt of documents as they stood prior to the

amendment in 1999 and after the amendment would show that the power of the Court to receive documents is much more wider and liberal than what it was prior to the amendment of the Code. In ***S.Rathinaswamy v. S.Bhanumathi***, reported in **2006 (2) CTC 491**, this Court had considered the scope of Order VII Rule 14(3) of the Code of Civil Procedure, again after referring to the amendments to the Code of Civil Procedure, introduced in the year 1999 and 2002, it was held that the main object of Order VII Rule 14(3), conferring the power of the Court to receive the documents in genuine cases is to receive the documents if good cause, is shown to the satisfaction of the Court, for the non-production of the documents at an earlier stage. It was also pointed out that after all the procedure is only a handmaid of justice and Courts should always attempt to do complete justice between the parties, based on the evidence that is produced and not shut out the evidence.

9. In ***Chakreshwari Construction (P) Ltd., v. Manohar Lal***, reported in **2017 (5) SCC 212**, the Hon'ble Supreme Court has considered the scope of Order VII Rule 14(3) and Order LI Rule 27 of the Code of Civil Procedure and held that they are enabling provisions, which enable the Court to exercise the discretion to receive the documents, despite the fact that there has been a delay. In the affidavit, filed by the applicant the reasons for the

delay in production of these documents is sought to be explained by stating that the plaintiff was assimilating the evidence. No doubt, the affidavit could have been more explanatory and that cannot be a sole ground to reject an application for production of documentary evidence, particularly when the trial is at a very preliminary stage, where only P.W.1 that too, a law officer of the plaintiff has been examined.

10. The complaint or grievance of the learned counsel for the respondents is that there is no reference to the documents in the pleadings and that these documents had come into the existence in 2007 and 2008, i.e. just before or at a time when the suit came to be filed, therefore, the plaintiff having been aware of the existence of these documents ought to have produced the documents earlier. It is also his contention that the attempt is to take the defendant by surprise. I am unable to countenance the contentions of the learned counsel for the respondent, in view of the fact that the documents that sought to be produced are only Test Reports of the products of the plaintiff as well as that of the defendant. The veracity of the Test Reports will depend on the further examination of the witnesses relating to the document. Both the plaintiff and the defendants are renowned manufactures of domestic products, be it Kissan Fruit Jam or Domex Toilet Cleanser. Therefore, I do not find any element of surprise in the Test

Reports being produced at the later point of time in the evidence. I do not see any prejudice that would be caused to the defendants, by allowing the documents to be produced, since the defendants evidence has not commenced yet. It is always open to the defendants to lead evidence in order to discredit the contents of the documents and establish before Court that these documents are either unreliable or that *de hors* the conclusions in the documents, the advertisements made by the defendants cannot be termed as disparaging advertisements.

11. I am therefore of the view that the documents should be allowed to be produced in evidence, to enable the Court to reach the appropriate conclusions after the trial. Hence, the application is allowed and the documents are permitted to be produced in evidence subject, of course, to proof and relevancy and examination of persons connected with the preparation of those documents. For all foregoing reasons, this application is allowed and the documents that are sought to be produced are permitted to be produced in evidence, subject to proof and relevancy.

22.03.2018

jv

Index : Yes/No

Internet: Yes/No

Speaking order/Non Speaking order

R.SUBRAMANIAN,J.

Jv



Pre Delivery Order
Application No.8372 of 2017
in CS No.1128 of 2007

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CS Nos.1128 to 1131 of 2007**R.SUBRAMANIAN,J.**

*Registry is directed to post the
suit for continuation of evidence,
before the learned Additional Master I*

on 26.03.2018.

22.03.2018

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