

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 03RD DAY OF SEPTEMBER 2020

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

A.Nos.561 and 562 of 2020

IN

C.S.No.259 of 2017

A.Nos.561 and 562 of 2020:

N.Ranga Rao & Sons Private Ltd.,
PB No.52, Vani Vilas Road,
Mysore: 570004

and also at

T.S-109, Block No.3, Poomagal,
5th Street, Ekkaduthangal,
Chennai - 600 032

...Applicant/Applicant/Plaintiff

Sree Annapoorna Agro Foods,
No.98E, Karattu Thottam,
Erode 638 004

...Respondent/Respondent/Defendant

A.No.561 of 2020:

This application praying that this Hon'ble Court be to grant leave to the Applicant to produce the additional documents morefully described in the schedule to the Judge's Summons as evidence in support of Applicant/Plaintiff in C.S.No.259 of 2017 on the file of this Hon'ble court.

A.No.562 of 2020:

This application praying that this Hon'ble Court be to reopen the Plaintiff side evidence in C.S.No.259 of 2017 by recalling PW1, Mr.V.Ramamoorthy to be examined before this Hon'ble Court.

These applications coming on this day before this court for hearing the court made the following order:

Two applications had been filed in the suit after evidence had already been recorded not only on the side of the plaintiff, but also on the side of the defendant. In fact, recording of evidence is already closed. At this stage, the plaintiff has come forward with these two applications, seeking to reopen the evidence of PW-1 and permission to let in additional documents.

2.The documents now sought to be filed are notices and letters issued by the plaintiff to protect passing off and infringement of the registered trademark 'Cycle' and also advertisements and promotions for the very same trademark 'Cycle' and invoices to establish that there was sales of goods under the trademark 'Cycle'.

3.Before examining the averments made in the affidavit and in the counter affidavit and also arguments advanced, a brief background of the facts is required.

4.The suit in C.S.No.259 of 2017 had been filed by the plaintiff seeking protection of their registered trademark 'Cycle' from infringement and

also injunction restraining the defendant from passing off their products under the offending trademark 'Cycle'.

5.It is stated that the defendant is also marketing their product namely, edible oil under the very same mark 'Cycle'. The plaintiff is in the business of marketing Agarbathies. The necessary facts required to establish registration, reputation, prior usage and such other factors as required under Section 29 of the Trademarks Act, 1999, had been pleaded and written statement denying the same had also been filed. Issues had been framed. Evidence had also been adduced.

6.Now, the plaintiff seeks to mark these documents claiming that usage of the mark 'Cycle' can to be traced to atleast four decades back, when the plaintiff had issued notices and letters seeking to prevent third parties from passing off their products under the brand 'Cycle' and from infringement of the trademark 'Cycle'. Advertisements and promotions prior to the suit had also been filed as documents and these are relied on to show that the plaintiff had been promoting their products and had gained reputation and goodwill in the market for the said trademark 'Cycle'. Invoices are now produced to show that the plaintiff had been marketing the products for a considerable period of time prior to the institution of the suit.

7.The only reason advanced for producing the documents now and for not producing them at the time of filing the plaint is that the documents

was unearthed recently. No other details had been given. This reason is very strongly disputed by the learned counsel for the respondent, who stated, and quite logically, in my opinion, that if these documents are old, then the plaintiff should have been in possession of them, even prior to the filing of the suit and no reason has been given as to why these documents were not filed along with the plaint and at that time when the plaint was presented in the Original Side of this Court.

8. At any rate, I hold that owing to the nature of these documents and the fact in issue, the documents may be taken in record, however subject to admissibility namely, by producing the primary documents, subject to relevancy, subject to being tested in cross-examination and also subject to proof of these documents. The documents will have to be proved in manner known to law. If they are not proved in manner known to law, then the documents cannot be appreciated at the time of advancing arguments.

9. So far as relevancy is concerned, I hold that they can be termed relevant only to the limited aspect that the documents show that the plaintiff has been using the mark 'Cycle'. But whether they are relevant, insofar as facts of the present case is concerned, where the defendant is also marketing their products under the same mark for edible oil, is a matter to be examined only after evidence is recorded.

10. So far as admissibility is concerned, to reiterate the primary documents will have to be produced, only then can the documents be admissible in evidence.

11. Along with the applications, there is a 4th document, which has been filed namely, awards and certificates, which are post institution of the suit and therefore, I hold that evidence cannot be let in same and they cannot be permitted to be marked as exhibits.

12. I am keeping all other issues open to await the nature of evidence relating to relevancy of these documents. On this narrow premise, these applications are allowed, again reiterating, that allowing these applications would not indicate that the Court had given any positive opinion about the relevancy of these documents, and which has to be tested during the cross examination of the witness.

13. In view of the fact, that the plaintiff has come forward with these applications post conclusion of trial, I also hold that the defendant must also be given an opportunity to let in positive evidence to rebut the case of the plaintiff, so far as these documents are concerned, if the defendant feels it necessary to let in evidence in that regard.

14. Both the applications are allowed with the above observations. Evidence of PW-1 is reopened. The defendant may file an affidavit regarding either admission or denial of these documents and depending on the same,

the nature of evidence can be let in, and can also be narrowed down by this court.

15.For filing such affidavit by the defendant, with respect to these documents, time is granted till 18.09.2020.

Sd/.C.V.K.J.
03.09.2020

//Certified to be a true copy//
Dated this the day of 2020.

SU.07.09.2020

COURT OFFICER(O.S.)

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



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