

A.Nos.3092, 3093 & 3094 of 2021
in
C.S.No.780 of 2015

R.SUBRAMANIAN, J.

These applications have been filed seeking to recall and reopen the evidence of P.W.1 and to produce the additional documents. Though the application in A.No.3094 of 2021 has been filed under Order VII Rule 14 (3) of the code of civil procedure, overlooking the fact that the Order VII Rule 14 has been made inapplicable to the suits before the Commercial Division by Order XI Rule 7 of the Code of Civil Procedure as amended by the Commercial Courts Act, 2015. This application is treated as one under Order XI Rule 1 Sub-rule 5 of C.P.C.

2.The suit is one for infringement of trademark. When the suit was sent for trial, the plaintiff realised that the legal user certificate has not been produced. Claiming that the mistake is due to oversight and that no prejudice would be caused to the defendant by allowing these documents to be produced and the plaintiff's cause would suffer irreparable, if the plaintiff is not allowed to produce the documents, which are certified copies furnished by the Trademark Registry, the plaintiff would seek leave to produce the documents.

3.Mr.S.Patrick, learned counsel appearing for the defendant would oppose these applications contending that the applications are highly belated and the plaintiff cannot be allowed to fill up the lacunae in the evidence, due to the non-production of the legal user certificate.

4.True, there is delay in production of the documents but the plaintiff had sued for infringement on the ground that it has registered the mark. The certificate of registration has been produced along with the plaint. The legal user certificate, which are now sought to be produced are only documents, which are in proof, the fact that there is a registration and the plaintiff has a right to use the mark as a registered mark, rejection of these applications would result in valuable rights of the plaintiff being lost. I am therefore, of the opinion that the power of the Court to condone the delay in order to meet ends of justice, which is a well recognized, should be exercised in favour of the plaintiff in this case. The fact that no prejudice would be caused to the defendant is also taken into account in concluding that these applications should be allowed and the plaintiff should be allowed to produce the documents. Therefore, these applications in A.No.3092,

3093 & 3094 of 2021 are allowed, the evidence of P.W.1 is reopened and recalled. The plaintiff is permitted to produce the documents namely, legal user certificate, which has been filed along with these applications.

5.Registry is directed to list the suit before the learned Additional Master – III on 22.09.2021 for filing proof affidavit of P.W.1 and marking of documents. Cross-examination of P.W.1 to be completed by 30.09.2021. Upon completion of the evidence of P.W.1, the Registry is directed to list the suit before the Court for final hearing on 20.10.2021.

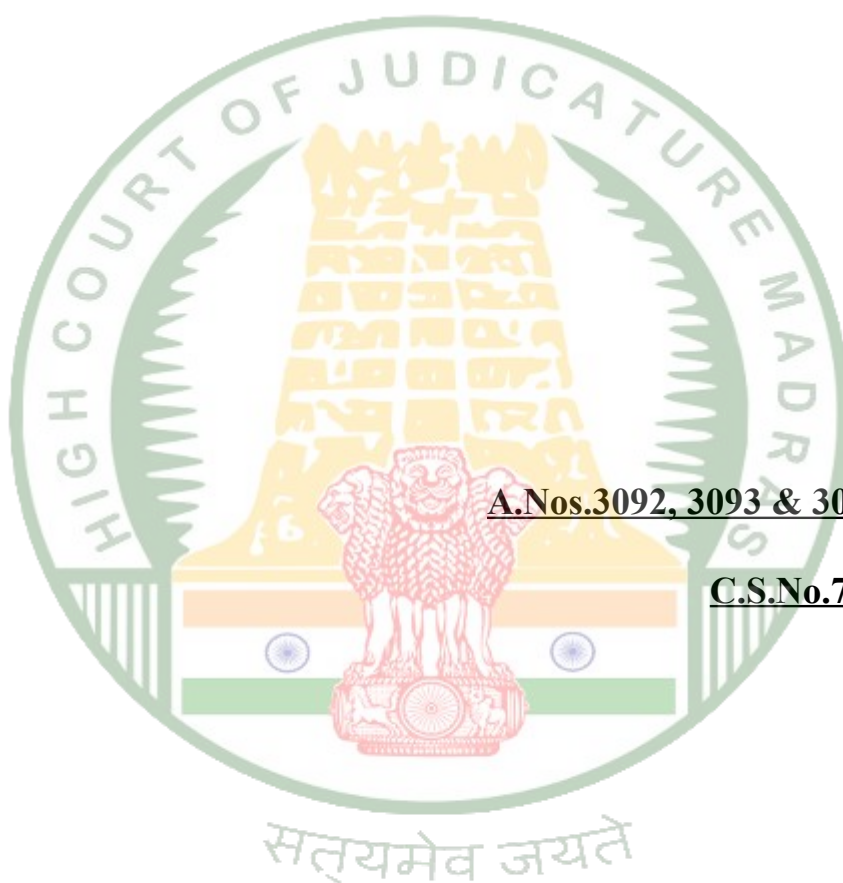
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