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Appln.No.1384 of 2022 in
C.S.No.651 of 2008

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C.S.No.651 of 2008

V.BHAVANI SUBBAROYAN, J.,

This application is filed by the applicant / defendant to produce and mark the email dated 24.01.2014 from the plaintiff to CCRAS along with the forwarding mails as defendant's document and the plaintiff's product Dr.JRK's 777 oil as M.O.No.3.

2. The learned counsel for the applicant / defendant submits that the suit has been filed against the defendant for infringement of trademark 777 oil and also for passing off. The evidence of P.W.1 is completed and the applicant has been contesting the suit since the year 2008 and has also stated that the respondent / plaintiff does not have any exclusive right over 777 Oil as a trademark. In fact, the plaintiff is now using the trademark "Dr.JRK's 777 oil" and the same is only after the applicant / defendant complained to National Research Development Corporation (NRDC) / Central Council for Research in Ayurveda & Siddha (CCRAS) that the plaintiff claiming exclusive right over 777 oil. In response to the same, the defendant has written an email dated 24.01.2014 through its Director, viz., J.K.Rajagopal to CRAS wherein they have agreed to use Dr.JRK's 777 oil



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and thereafter, they have filed and obtained registration of “Dr.JRK's 777 oil”

3. The learned counsel for the applicant contends that P.W.1 in his evidence had stated that he did not know of such a communication at all and the plaintiff's evidence is also closed. Further, the facts narrated above had taken place after filing the suit, hence the same were not stated in the written statement. Since the plaintiff also failed to bring it to the notice of this Court and the said facts are important to decide the suit, this application is filed to place the email relied upon the request to the defendant's consultant Raghothamaa, who was the complainant on behalf of the defendant.

4. It is represented on behalf of the applicant / defendant that along with the above said document, the applicant also seeks to file the plaintiff's Dr.JRK's 7777 Oil product as on date to prove that the plaintiff has changed the trademark and mark the same as M.O.3. The plaintiff had marked M.O.1 and M.O.2 which are the plaintiff's product and the defendant's product at the time of the suit. Further, the name in the outer label and outer cover package has been changed. As the document and



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the material objects are just and necessary to decide the disputes in the present suit, the learned counsel for the applicant pleaded that the same may be permitted to be produced and marked as the defendant's documents and as material objects.

5. Per contra, the learned counsel for the respondent / plaintiff vehemently contended that the application is vexatious and has been filed only with a view to protract the trial and also enlarge the defence from what was contended in the written statement. The only defence raised by the applicant / defendant in the written statement was that the defendant is also a registered proprietor of the trademark Sanjeevi's 777 Oil under No.1167605 in Class 5. On coming to know about the above registration obtained by the applicant, the respondent / plaintiff had filed an Application under Section 47 of the Trademarks Act, 1999 before the Hon'ble Intellectual Property Appellate Board (IPAB) in ORA/218/2008/TM/CH and the said IPAB, vide order dated 16.08.2011 allowed the application and directed the removal of the trademark registered in the name of the applicant / defendant, which was confirmed by this Court vide order dated 06.09.2011 in W.P.No.20195 of 2011.



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6. It is the further submission on behalf of the respondent / plaintiff that the defendant has not questioned the registration of the respondent / plaintiff and as such, the applicant / defendant cannot question the registration of the respondent at this point of time. However, with a view to divert the attention of this Court, the applicant has come out with this application, which is wholly irrelevant. When there is no pleadings questioning the validity of the trade mark, there can be no evidence led by the applicant. Moreover, the document sought to be produced by the applicant is not in any way concerned with the present suit. In fact, the said communication was not even addressed to the applicant / defendant and the manner in which the applicant / defendant has come into possession of the same is not known.

7. The learned counsel for the respondent / plaintiff also submits that the said document, viz., email, was addressed to another individual and not the applicant. Further, the contents of the email are irrelevant for deciding the issues in the case on hand and the respondent denies all the averments of the applicant except to mark the latest product package of the respondent / plaintiff as M.O.3.



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8. Heard the learned counsels on either side and perused the documents placed on record.

9. On going through the alleged email dated 24.01.2014, it is seen that there is no conferment of any title of '777' against the respondent / plaintiff or passing off has been done by the defendant and for deciding such issue, the parties shall undergo trial. It is necessary to extract the relevant portion of the alleged e-mail forwarded by the plaintiff to CCRS:-

“Sir, as you may be aware, we had an agreement that was a non-exclusive arrangement with NRDC for the technology. So sir, we have never claimed nor will do in future also any ownership the intervention of CCRAS. We have also never been an impediment in the decision of NRDC to issue fresh licences to private or public enterprises for the technology.

We will continue to contribute in our limited capacity to popularize the Siddha System of Medicine as before. Further, to strengthen our focus on research, we also propose to promote the brand “Dr.JRK's 777 Oil” in the near future.”

All the above said developments have been taken place after filing of the suit, viz., C.S.No.651 of 2008 and hence this Court is of the opinion that it is just and necessary to bring the developments to the notice of this Court



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to enable the Court to render justice based on the said developments.

Whether the same is prejudicial or detrimental to the parties, in fact, for rendering the Judgment, these documents are to be looked into by the Court.

Accordingly, this application is allowed and the documents as well as M.O.3 shall be received subject to proof and relevancy. Since it is a time bound trial, post the matter before learned Additional Master II on 06.04.2022 for trial and the trial shall be completed on or before 30.04.2022. It is needless for this Court to make a mention that the parties shall not seek adjournment on any score.

29.03.2022

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