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A.No.4621 of 2022
in C.S(Comm.Div) No.22 of 2022

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M.SUNDAR, J

In this order, parties shall be referred to by their respective ranks in the main suit for the sake of convenience and clarity.

2. In the hearing in this Commercial Division today, Ms.Varsha Chandrasekhar, learned counsel representing Mr.K.Harishankar, counsel on record for plaintiff and Mr.Rahul M Shankar, learned counsel on record for the lone defendant are before this Commercial Division.

3. Captioned application has been taken out by plaintiff with a prayer to receive seven additional documents, an adumbration of which has been made in the form of a Schedule to the Judge's Summons qua captioned application.

4. To be noted, captioned application has been filed under Order XI Rule 5 of 'amended The Code of Civil Procedure, 1908' [hereinafter 'amended CPC' for brevity and convenience] as amended by 'the Commercial Courts Act, 2015' [hereinafter 'CCA' for the sake of convenience and clarity].

5. Learned counsel for plaintiff submits that the main suit is *inter alia* for injunctive relief for alleged infringement and passing off of plaintiff's registered Trade Mark. Elaboration in this regard is not necessary considering



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the narrow scope of captioned application.

6. Lone defendant filed written statement and completed pleadings. Learned counsel for plaintiff submits that a reply statement had become necessary owing to the contents of written statement, more particularly owing to plaintiff's averments/allegations regarding other Trade Marks and registrations. It is not necessary to delve further into this aspect of the matter as an application for filing reply statement has been taken out by plaintiff and the same has been ordered by this Court on 24.08.2022. This order has been given quietus is the common say of both sides. Considering the said submissions, this Commercial Division is of the view that counter affidavit is not necessary, though a request for time to file counter affidavit was made. This is to ensure that the suit proceeds expeditiously.

7. The important aspect of the matter is, seven documents sought to be received were filed along with the reply statement.

8. Learned counsel for defendant opposing the application submitted that the plaintiff has not demonstrated that the documents now sought to be received were not with the plaintiff at the time of presentation of plaint. Learned counsel drew the attention of this Court to Sub-Rule (5) of Rule 1 of Order XI of amended CPC and submitted that a plaintiff shall not be allowed to



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rely on documents, which were in the plaintiff's custody but not disclosed along with the plaint without leave of this Commercial Division and such leave shall be granted only upon plaintiff demonstrating reasonable cause for non-disclosure along with the plaint. In this regard, this Commercial Division notices that the Judge's Summons shows that the plaintiff has invoked Order XI Rule 5 of amended CPC. This obviously is a typographical error. This has to read as Order XI Rule 1 sub-rule (5).

9. As regards plaintiff establishing reasonable cause for non-disclosure along with plaint, learned counsel for plaintiff drew the attention of this Court to paragraphs 3 and 4 of support affidavit, wherein the aforementioned trajectory i.e., what necessitated the filing of reply statement and application for reply statement being allowed by this Court on 24.08.2022 have been articulated. The objection of the defendant cannot be sustained and the reason is, seven documents may or may not have been in the custody of the plaintiff but the necessity to file the same [according to the plaintiff] arose only after filing of written statement. This is clearly within the sweep of 24.08.2022 order of this Court which has become final as the seven documents that are now sought to be received (now the prayer) have been filed along with reply statement.



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10. Though obvious, it is made clear that this Court has not expressed any view or opinion regarding the rival contentions, regarding allegations regarding other marks as all that would fall for consideration when the main suit is taken up. All these questions are left open.

11. Be that as it may, any document received is subject to proof and relevance. Therefore, captioned application is ordered subject to this usual rider. There shall be no order as to costs.

**18.10.2022
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