



A.No.2852 of 2023
in C.S(Comm.Div.)No.55 of 2021

P.T.ASHA, J.

The plaintiff has filed the above suit for an injunction restraining the defendants from in any manner disparaging and / or denigrating the plaintiff's brand NIMYLE by way of advertisement or otherwise showing the plaintiff's product in poor light.

2. The defence to the above suit is that the applicant / defendant have not advertised the plaintiff's product in any disparaging manner and that they have only compared a herbal floor cleaner to the non-herbal floor cleaner of the defendant. They would further submit that the advertisement makes an absolutely truthful and correct statement, which does not in any fashion constitute disparagement or slander. The defendant would further submit that they have already filed four complaints against the plaintiff's advertisements for their product under the name NIMYLE and deny the allegations that these complaints were frivolous and baseless. The written statement has been sworn to by one Sambit Swain.



3. A perusal of the records in the above suit would indicate that on 06.07.2022, a Case Management Schedule was drawn up in and by which the following schedule had been set out.

*On 08.08.2022, chief examination of P.W1 had commenced.

*On 26.08.2022, since the cross examination of P.W1 had not been completed and the case management schedule had not been adhered to, the matter was directed to be listed before this Court for revising the Case Management dates.

On 10.11.2022, a revised Case Management Schedule was drawn up as follows:-

<i>Sl.No.</i>	<i>Dates</i>	<i>Activity</i>
1	29.11.2022 to 30.11.2022	Cross examination of P.W1 by counsel for defendant
2	19.12.2022 to 20.12.2022	Chief examination of D.W1 – Filing of proof affidavit and marking documents
3	04.01.2023 to 06.01.2023	Cross examination of D.W1 by counsel for plaintiff.
4	12.01.2023 to 13.01.2023	Chief examination of D.W2 – Filing of proof affidavit and marking documents



<i>SL.No.</i>	<i>Dates</i>	<i>Activity</i>
5	30.01.2023 to 01.02.2023	Cross examination of D.W2 by counsel for plaintiff
6	27.02.2023	Filing of written arguments and convenience typed sets.

Thereafter, once again, the schedule was not followed and a revised case Management Schedule was fixed on 06.01.2023. Under this schedule, the cross examination of P.W1 by the defendant had to be completed by 31.01.2023 and the examination of the defendant's witness had to commence on 07.02.2023 and conclude by 23.03.2023. Once again, the schedule was not followed and on 15.02.2023, the defendant sought time to file a revised case management schedule, as per which, the examination of the defendant's evidence had to commence on 19.04.2023 and conclude by 14.07.2023. On 19.04.2023, the defendant did not get into the box and sought time stating that an application was being moved for filing the additional documents. The additional documents were filed only on 12.06.2023 and the application for receiving the additional documents was listed on 16.06.2023. A counter has been immediately filed on 28.06.2023 and this application is listed today for arguments.



4. It is the contention of the applicant / defendant that no prejudice would be caused to the respondent / plaintiff, if this application for receiving the additional documents is allowed. He would submit that the documents are necessary for an effective adjudication. However, the defendant would state that the compact disk containing the plaintiff's advertisement along with its written statement has already been filed and Document No.4 which is now sought to be marked is only in respect of the same. He would submit that the documents are of the utmost relevance and are vital to decide the issue on hand. Therefore, the counsel would submit that this application has to be allowed.

5. Per contra, Mr. Manishankar, learned Senior Counsel appearing on behalf of Mr. Arun C. Mohan, learned counsel for the respondent/plaintiff would submit that the applicant / defendant is unnecessarily dragging on the matter. The defendant, as per the revised Case Management Schedule, had to commence their cross examination by 19.04.2023. However, this application has been filed only in the month of June 2023, much beyond the time fixed by this Court for the



commencement and conclusion of the defendant's evidence. Therefore, the learned Senior Counsel would submit that the present application is nothing but a sheer abuse of process of law and there is nothing to state as to why these documents had not been produced at an earlier point of time.

6. Heard the learned counsel on either side and perused the materials available on record.

7. The application in question has been filed invoking the provisions of Order XI Rule 1 (10) of the Amended C.P.C read with Order XIV Rule 8 of O.S. Rules. A perusal of the said provision, which is extracted herein below would clearly show that the defendant cannot be permitted to rely on documents which were in their control or custody and were not disclosed along with the written statement or counterclaim.

“1(10) Save and except for sub-rule (7)(c)(iii), defendant shall not be allowed to rely on documents, where in the defendant's power, possession, control or custody and not disclosed



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along with the written statement or counterclaim, save and except by leave of Court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or counterclaim.”

It is not the contention of the defendant that they were unable to access these documents earlier and had only now come into knowledge of the same.

8.The defendant has also not set out any reasonable cause for not disclosing these documents in the written statement. Without complying with the above requirement, the application as filed is not maintainable. The defendant has nowhere stated that he was not aware of the documents, and now only have they come to know about the same, and apart from that, it is seen that the documents are post-suit. This is evident from paragraph No.3 of the affidavit filed in support of this application, where, the applicant has stated as follows:-

“3. I state and submit that the Defendant had filed all documents which were in the Defendant's power, possession, control and custody and relevant for the



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purpose of adjudication of the present suit. However, pursuant thereto, subsequent events have occurred, documents in support of which, are material for the adjudication of the present suit.) I state and submit that the present suit is at the stage of evidence and the Defendant is filing the Evidence Affidavit of its witnesses, Mr. Atishay Jain. Apart from the documents filed along with the Written Statement, the Defendant has also sought to place on record and exhibit the below mentioned additional documents which are being filed vide the present application:

The respondent / plaintiff has no objection to Document Nos.1 and 2, which are detailed herein below being accepted as evidence.

9. Accordingly, this application is allowed and the Document Nos.1 and 2, namely, Original authorization in favour of Atishay Jain to depose on behalf of the defendant (Web copy) and Copy of authorisation in favour of Mr.Sambit Swai (Web Copy) shall be received in evidence and given Exhibit numbers. Therefore, this Court now re-frames the revised Case Management Schedule.



<i>SL.N o.</i>	<i>Dates</i>	<i>Activity</i>
1	01.08.2023	D.W1 shall enter the box to adduce evidence in chief and filing proof affidavit.
2	09.08.2023	Chief examination of D.W1 shall be concluded.
3	17.08.2023	Cross examination of D.W1 shall be concluded.
4	18.08.2023	D.W2 shall enter the box for evidence in chief
5	25.08.2023	Chief and cross examination of D.W2 shall be concluded
6	31.08.2023	Filing of written arguments and convenience typed sets.

The Registry is directed to list it before the Additional Master-III on 01.08.2023 for chief examination of D.W1. It is needless to state that if the defendant does not adhere to the Case Management schedule, he shall be visited with the default clause provided in Order XV-A Rule 8 of the Schedule to the Commercial Courts Act.

12.07.2023

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