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A.No.2844 of 2023

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in
C.S.(Comm.Div).No.295 of 2020

S.SOUNTHAR, J.

The instant application has been filed by the applicants/plaintiffs seeking leave of the Court to produce additional documents.

2. The applicants have filed the suit complaining infringement of trade mark AACHI. Along with this application, the applicants have filed six documents to produce the same as additional documents. The Doc.Nos.1 & 2, are sample sales Invoices of the plaintiffs and advertisement relating by the period 1999-2023.

3. It is the specific averment of the applicants that they have been using trade mark AACHI from 1995 onwards. In support of the said contention, they want to rely on these two documents. Doc.No.3 is the legal use certificate of trade mark registered at the time of filing of



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the suit, Doc.No.4 is the legal use certificate of trade mark registered in respect of trade mark it was registered subsequent to the suit, Doc.No.5 is the certificate issued under Section 65B of the Evidence Act 1872, in support of electronic evidence and Doc.No.6 is a complaint preferred by the applicants against the respondent to rectify the respondent's company's name 'AACHI CHIT FUND P LTD'.

4. The Doc.Nos.3, 4 & 6 were not available with the applicants when the plaint was presented. Doc.No.5 is only a certificate under Section 65B of the Evidence Act, in support of the electronic documents. As far as Doc.Nos.1 & 2 are concerned the applicants have made a specific averment in the plaint that they have been using the trade mark AACHI from the year 1995.

5. According to the applicants, Doc.Nos.1 & 2 are very vital documents to prove their case in the suit.



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6. The learned counsel for the respondent vehemently opposed this application on the ground that in view of the Order 11 Rule 5 of CPC as amended by Commercial Courts Act, the applicants, who possessed the Doc.Nos.1 & 2 even at that time of presentation of the plaint should not be allowed to produce the same. The suit is only at the stage of filing Admission/Denial of documents. There are averments in the plaint in support of Doc.Nos.1 & 2 in the plaint. The procedural law is only a handmaid of substantial Justice. In case of conflict between the substantial rights and procedural law, the latter must give way for the former. Therefore, this Court is inclined to allow this application.

7. In view of the fact that there is a delay on the part of the applicants to produce Doc.Nos.1 & 2 this Court directs the applicants/plaintiffs to pay cost to the respondent/defendant. Accordingly, this application is allowed subject to the condition that the applicants shall pay a sum of Rs.10,000/- (Rupees Ten Thousand Only)



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towards costs to the respondent within a period of two weeks from today.

In case, the applicants/plaintiffs fail to make the payment within the said period, the application shall stand automatically dismissed.

8. Subject to the aforesaid condition, this application is allowed and the additional documents produced by the applicants can be received in evidence subject to proof and relevancy.

9. The respondent is permitted to file statement of Admission/Denial in respect of the additional documents produced by the applicants within period of four weeks from today.

20.06.2023

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