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(TM)A/20 to 23/2023
in (T)OP(TM)/11, 13, 15, 16/2023
(ORA/12, 14, 16, 17/2021/TM/CHN)

SENTHILKUMAR RAMAMOORTHY,J

In these applications, the applicant seeks leave to rely on additional documents which fall into about four broad categories. The said categories are (1) legal user certificates, (2) sample invoices, (3) advertisements and (4) articles and awards. The rectification petitions are at the pre-trial stage and issues have not been framed.

2. Learned counsel for the applicant submits that the business was divided between the applicant in (TM)A/51, 52/2023 and the applicant herein and, as a consequence, the trade marks were also split between the two groups. This entailed re-issuance of the trade marks under different numbers. Therefore, it is stated that it has become necessary to place on record the legal user certificates in respect of such trade marks. As regards invoices, it is stated that



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invoices were filed for the period ranging from 1977 to 2010. On account of the lapse of considerable time, it is stated that it has become necessary to place on record invoices from 1977 to 2023 by consolidating the same. Similarly, as regards advertisements, it is stated that such advertisements were filed for the period ranging from 1992 to 2005 and now samples from 1992 to 2022 are being filed. Similar submissions are made with regard to articles in magazines and awards received by the applicant.

3. In response to the submissions, learned counsel for the rectification petitioner relies on Rule 1(10) of Order XI of the CPC and contends that the applicant has failed to establish reasonable cause for the grant of leave in respect of documents that were available when the petition was filed in 2010. With reference to the invoices, learned counsel submits that about 16 invoices relate to the period between 1977 and 2010 and that these invoices are at pages 17, 19, 20, 22, 26, 27, 31, 32, 34 and 35 to 41 of the typed set filed by the applicant. Likewise, as regards the advertisements, it is



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submitted that the advertisements at pages 92 to 95, 97, 101, 106, 107, 128, 129, 130 and 131 also pertain to the period prior to the filing of the petition. A similar submission is made with regard to the article in the Frontline and the awards referred to in pages 166 and 169 of the typed set.

4. As discussed in the context of the connected applications, it should not be lost sight that the rectification petition was filed not before this Court but before the IPAB. Therefore, at the time of filing of the counter statement by the applicant, Rule (1)10 of Order XI was not applicable. By virtue of Rule 10, leave is required with regard to documents in the possession, power, custody or control of the defendant / respondent. Therefore, this provision would not apply with regard to documents relating to the period subsequent to the filing of the petition.

5. By taking into account the fact that the rectification petition was filed before the Commercial Courts Act, 2015, became applicable



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and other relevant factors such as the Covid-19 pandemic having intervened, the hiatus between the closure of the IPAB and the constitution of the IP Division, the pre-trial stage and the fact that several documents relate to the period subsequent to the filing of the counter statement, I am inclined to allow these applications subject to the right of the respondent to file an affidavit of admission / denial in respect of such additional documents, and the right to raise objections *inter alia* on grounds of admissibility, relevance and proof in course of the trial.

6. Therefore, (TM)A/ 20 to 23/2023 are allowed as prayed for.

22.11.2023
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