



A.No.4527 of 2021

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in
C.S.No.754 of 2012

SENTHILKUMAR RAMAMOORTHY,J.

The plaintiff has presented this application for leave to produce documents under Order 11 Rule 1(5) of the Code of Civil Procedure as amended by the Commercial Courts Act, 2015.

2. The suit was filed in 2012 and issues were framed after parties filed the affidavits of admission/denial of documents filed by the counter party concerned. The trial is yet to commence.

3. The Plaintiff seeks leave to file five sets of documents. The first set relates to Trade Mark registrations which were obtained either prior to or subsequent to the institution of the suit. The second and third sets of documents are invoices issued by the plaintiffs. The fourth relates to complaint resolution forms and the last set of documents are sample brochures of the plaintiffs.



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4. Learned counsel for the plaintiff submits that the suit was instituted prior to the enactment of the Commercial Courts Act, 2015 and that the plaintiff is entitled to latitude on that ground. By inviting my attention to the Trade Marks Legal User Certificates, learned counsel submits that many of these certificates were issued after the date of institution of the suit. He further submits that no prejudice would be caused to the defendant if this application is allowed because the suit is at the pre-trial stage.

5. In response, learned counsel for the defendant submits that a request for permission to rely on additional documents should not be allowed unless the applicant shows reasonable cause. In support of this contention, he relies on the judgment of the Hon'ble Supreme Court in *Sudhir Kumar Alias S.Baliyan V. Vinay Kumar G.B. [(2021) 13 SCC 71]*. As regards documents which were already in the possession of the plaintiff as on date of institution of the suit, learned counsel submits that the plaintiff has failed to establish reasonable cause. Therefore, he submits that the application is liable to be dismissed.



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6. Order 11 Rule 1, as applicable to commercial disputes, mandates that the plaintiff should file all documents in its power, possession, control or custody at the time of institution of the suit. Sub-Rule 5 of Order 11 Rule 1, which is set out below, is an exception to the Rule:

"The plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint."

Sub-Rule 5 of Rule 1 enables the plaintiff to obtain leave of the Court to rely on documents, which were not filed when the suit was instituted, in spite of being in the plaintiff's power, possession, control or custody.

7. As regards the Trade Mark registrations that were granted after the institution of the suit, the rigours of Sub-Rule 5 will not apply. Sub-Rule 5 uses the expression "reasonable cause". Expressions such as "sufficient



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cause", "reasonable cause" or "just cause" are used in procedural prescriptions in statutes so as to confer discretion on the Court while considering such request. The question as to whether reasonable cause is established presupposes answers to the questions reasonable cause for what and under what circumstances.

8. The defendant filed Application No.3250 of 2021 seeking leave under Order 11 Rule 1(10) of the Code of Civil Procedure, as applicable to commercial disputes, and such leave was granted by order dated 06.10.2021. It should also be noted that such leave was granted without imposing any costs.

9. By taking into account the fact that the suit is at the pre-trial stage; some of the documents were obtained after the date of institution of the suit; and that leave was also granted to the defendant to rely on documents which were in its power, possession, control or custody on the date of filing of the written statement, I am inclined to and hereby allow this application albeit subject to the right of the defendant to file the affidavit of admission/ denial



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in respect thereof and raise objections in course of trial inter-alia on grounds of relevance and proof.

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