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**A.No.5916 of 2023
and
C.S.No.706 of 2011**

ABDUL QUDDHOSE.J.,

A.No.5916 of 2023 has been filed, seeking permission of this Court to place on record the additional documents mentioned in the schedule to the judges summons. A.No.5917 of 2023 has been filed, seeking permission of this Court to amend the plaint in C.S.No.706 of 2011. There are two cross suits. One filed by the plaintiff in C.S.No.706 of 2011 and the other filed by the defendant in C.S.No.706 of 2011. The suit filed by the defendant in C.S.No.706 of 2011 is C.S.No.42 of 2009.

2. Both the suits have been filed for infringement and for passing off. The second plaintiff in C.S.No.706 of 2011 has filed the aforementioned applications, seeking for the aforementioned reliefs. At the outset, the learned counsel for the respondent / defendant in C.S.No.706 of 2011 has not raised any objection for marking of the following documents which have been disclosed in the application filed in support of A.No.5917 of 2023:

a) Copy of share transfer agreement dated 23.12.1994;



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- b) News report published in Financial Express;
- c) Relevant extracts from the records of Trademarks Registry records pertaining to TMA No.109842;
- d) Relevant extracts from the records of Trademarks Registry records pertaining to TMA No.109847 and 109849;
- e) Relevant extracts from the records of Trademarks Registry records pertaining to TMA No.206974.

3. The learned counsel for the respondent / defendant has raised serious objection only with regard to the reception of additional documents viz.,

- a) copy of assignment dated 06.07.1959;
- b) copy of assignment dated 28.03.2008.

4. A detailed counter affidavit has been filed by the respondent / defendant in C.S.No.706 of 2011 raising serious objection for allowing both the aforesaid applications. According to them, the first plaintiff had instituted the suit. Having not filed the documents, the second plaintiff cannot file the same at this stage belatedly. They would also state that no



cause has been shown in the affidavit filed in support of A.No.5917 of 2023 for filing the additional documents belatedly by the second plaintiff in the suit.

5. However, the learned counsel for the applicant in A.No.5917 of 2023 would submit that since the second plaintiff has been impleaded pursuant to orders passed by this Court on 16.08.2023 in A.Nos.1483 and 1484 of 2023, the applicant has a right to file this application, seeking for reception of additional documents, since the first plaintiff who had originally filed the suit did not file the same. He would also submit that the second plaintiff is also one of the defendants in the connected suit in C.S.No.42 of 2009 filed by the defendant in C.S.No.706 of 2011. He would also submit that the suit summons is yet to be served in the said suit and the applicant is having the right to file documents along with the written statement which may include documents which are sought to be received in A.No.5917 of 2023.

6. The main bone of contention raised by the learned counsel for the respondent / defendant is that since no cause has been shown in the affidavit



filed, the application cannot be allowed as prayed for. However, as seen from the order dated 16.08.2023 passed in A.Nos.1483 and 1484 of 2023, when the applicant was allowed to be impleaded as the second plaintiff in the suit, liberty was granted to the applicant to file necessary application, seeking for amendment of the pleadings contained in the plaint filed in C.S.No.706 of 2011. Only in accordance with the said liberty granted by this Court in A.Nos.1483 and 1484 of 2023 vide order dated 16.08.2023, the application seeking for amendment as well as the application seeking for reception of additional documents have been filed by the applicant who is the second plaintiff in C.S.No.706 of 2011.

7. The documents which are opposed by the defendant in C.S.No.706 of 2011 are the assignment deed dated 06.07.1959 and the assignment deed dated 28.03.2008.

8. During the course of his submission, the learned counsel for the applicant submitted that the aforesaid documents were not in the possession of the first plaintiff at the time of filing of the suit and therefore, the same could not have been filed by them. Since the applicant was impleaded as the



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second plaintiff in the suit C.S. No.706 of 2011, only subsequently, it became necessary for the applicant to file this application seeking for reception of the additional documents which includes the copy of the assignment deed dated 06.07.1959 and the copy of the assignment deed dated 28.03.2008. Though the same is not stated in the affidavit filed in support of this application, after giving due consideration to the fact that the applicant has already been impleaded as the second plaintiff in the suit, by virtue of an order passed by this Court on 16.08.2023 and liberty was also granted for the applicant to file an amendment application, this Court is of the considered view that the present application can be allowed. However, if at all the applicant / plaintiff No.2 in C.S.No.706 of 2011 decides to mark the said documents as exhibits during the course of trial, the respondent / defendant must be permitted to state all objections with regard to the marking of the said documents as exhibits and the same can be recorded by the learned Master while marking the said documents as exhibits by granting liberty to the respondent / defendant to raise all objections with regard to admission and relevancy of the documents during the course of arguments in the main suit.



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9. No prejudice will be caused if such a liberty is granted to the respondent / defendant. Mere marking of documents as exhibits will not prove that the documents are admissible in evidence. Therefore, allowing this application, seeking for reception of additional documents will not cause any prejudice to the respondent / defendant. Sufficient reasons have also been given by the learned counsel for the applicant for allowing this application by virtue of the fact that the applicant was impleaded as second plaintiff in the suit only subsequent to the filing of the suit and they have also been granted liberty to file an amendment application by virtue of this Court's order dated 16.08.2023.

10. For the foregoing reasons, this Court is rejecting the objections raised by the respondent / defendant for allowing this application in A.No.5916 of 2023. Accordingly, this application in A.No.5916 of 2023 is allowed as prayed for and the documents disclosed in the judges summons filed in A.No.5916 of 2023 are allowed to be received as documents filed on behalf of the second plaintiff in C.S.No.706 of 2011.

24.11.2023

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