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(TM)A/51, 52/2023
in (T)OP(TM)/12, 14/2023
(ORA/13, 15/2021/TM/CHN)

SENTHILKUMAR RAMAMOORTHY,J

These applications are filed to permit the applicant to place on record the documents described in the respective Judge's summons. The documents described in the Judge's summons are pleadings in proceedings between the contesting parties before the Bombay High Court and the courts in Madhya Pradesh. The rectification petitions are at the pre-trial stage and issues have not been framed.

2. Learned counsel for the applicant submits that multiple proceedings were initiated by the contesting parties against each other in different courts and that these pleadings are relevant for the purposes of adjudicating these petitions. Learned counsel further states that these pleadings could not be placed on record earlier both due to the Covid-19 pandemic and the time taken to constitute this Division upon the disbandment of the IPAB. He also submitted that no prejudice would be caused to the respondent if these pleadings



are taken on record.

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3. Learned counsel for the rectification petitioner opposes these applications by relying upon the relevant provision of the Commercial Courts Act, 2015 (the Commercial Courts Act) read with the rules framed by this Court for proceedings before the IP Division. According to learned counsel, the applicant has certainly not established reasonable cause because the pleadings in support of the applications do not provide cogent reasons for not filing the documents earlier.

4. Order XI of the Code of Civil Procedure, 1908, was amended in its application to commercial disputes by the Commercial Courts Act. Rule 1, sub-rule 10 thereof, which deals with filing of documents by the defendant after the date of filing of the written statement, is as under:

"10. Save and except for sub-rule(7)(c)(iii), defendant shall not be allowed to rely on documents, which were in the defendant's power, possession, control or



custody and not disclosed alongwith the written statement or counter-claim, save and except by leave of Court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure alongwith the written statement or counter-claim."

5. On reading Rule 1, sub-rule 10,, it is evident that leave of the Court is required for a defendant to rely on documents, which were in its power, possession, control or custody at the time of filing of the written statement, but were not filed at that time. Rule 1, sub-rule 10, further prescribes that the defendant should establish reasonable cause for not filing such documents along with the written statement. By virtue of sub-rules 13 and 15 of Rule 6 of the Madras High Court Intellectual Property Rights Division Rules 2022, the Code of Civil Procedure, 1908, as amended by the Commercial Courts Act is made applicable to original petitions filed before the IP Division unless there is something inconsistent thereto in the rules. Since there is nothing inconsistent in the rules, Order XI becomes applicable to applications for permission to rely on documents.



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6. In this case, a material consideration is that the rectification petitions were filed before the IPAB and the Code of Civil Procedure, 1908, was not applicable to proceedings in the IPAB. Put differently, when the applicants filed the counter statement before the IPAB, a provision such as Rule 1, sub-rule 10 of Order XI was not in force. For this reason, greater latitude should be extended to the applicants. Even otherwise, Rule 1, sub-rule 10 of Order XI enables a party to apply for leave by establishing reasonable cause.

7. The documents in respect of which the applicant seeks leave are pleadings of the contesting parties in connected proceedings. While assessing evidence, multiple factors such as admissibility, relevance, materiality, and weight come into play and most of these factors are best assessed at the time of final disposal when all the materials are before the Court.

8. The contention of learned counsel for the rectification



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petitioner that such applications should not be allowed as a matter of course cannot be disregarded as devoid of merit. However, by taking into account the fact that Covid-19 pandemic intervened for a period of about two years after the rectification petition was filed, there was a hiatus between the disbandment of the IPAB and the constitution of the IP Division, the pre-trial stage, and the other reasons adverted to above, these applications are liable to be and are, hereby, allowed subject to the right of the rectification petitioner to file the affidavit of admission / denial in respect of these additional documents, and raise objections on the grounds *inter alia* of admissibility, relevance and proof in course of the trial.

22.11.2023
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