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in
C.S. No.14 of 2021

ABDUL QUDDHOSE, J.

N. Ranga Rao & Sons Private Ltd., ... Applicant /Plaintiff
vs.
ITC Ltd. ... Respondent /Defendant

This application has been filed seeking for reception of additional documents.

2. The applicant / plaintiff has disclosed the documents which are to be received as additional documents by this Court in the Judges Summons filed along with this application. The details of the same are as follows :-

a) Invoice for sale of CYCLE BRAND THREE IN ONE product, dated 27.10.1981.

b) Certificate for registration of CYCLE BRAND THREE IN ONE label in various foreign countries – Multiple dates.

c) Orders passed by Registrar of trademarks in oppositions initiated by plaintiff against third parties for



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misuse of CYCLE BRAND THREE IN ONE colour scheme /
colour combination.

d) Warning letters issued by the plaintiff and
undertakings issued by third party recipients against misuse of
CYCLE BRAND THREE IN ONE colour scheme / colour
combination. – multiple dates.

e) Screenshot from Defendant's Facebook page.

f) Description of Mangaldeep App in Google Play
Store's website [https://play.google.com/store/apps/details?id=
=mangaldeep.itc.com.sarveshaam&hl=en_IN&gl=US](https://play.google.com/store/apps/details?id=mangaldeep.itc.com.sarveshaam&hl=en_IN&gl=US)

3. This application has been filed under Order XI Rule 1(5) of the Civil Procedure Code, as applicable to the Commercial Courts Act, 2015. The reasons given for not filing the aforementioned documents by the plaintiff along with the plaint as seen from the affidavit filed in support of this application is that the said documents were untraceable at the time of filing of the suit. According to the plaintiff only due to the urgency in filing of the suit, they could not file the aforementioned documents along with the plaint. According to them in the interest of justice, the present application has to be allowed as the aforementioned documents have



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material importance to prove the plaintiff's case. They have categorically stated that only due to inadvertence and non availability of the documents, the aforesaid documents have not been filed along with the plaint at the time of filing of the suit.

4. A counter affidavit has also been filed by the respondent / defendant disputing the contentions of the plaintiff. They have stated in the counter as follows :-

a) There is no justification for filing the present application at this stage, that too when a direction has been issued by this Court for filing of draft issues.

b) The plaintiff has not provided any cogent reason for not producing the documents earlier, despite having ample opportunity to do so and even though such documents were very much available in their possession all along.

c) The orders passed by the Registrar of Trademarks which the plaintiff proposes to file by way of additional documents have been passed over 13 years prior to the filing of the suit. Hence, they could not be allowed to be



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received by way of additional documents by this Court.

d) The plaintiff has not made adequate averments in the plaint with regard to the documents which are sought to be received as additional documents in this application. The sales invoice of the year 1981, which the plaintiff's seeks leave of this Court to be received as additional document is a fabricated document and further the said document having been in possession of the plaintiff even at the time of filing of the suit ought to have been filed at the time of filing of the suit and cannot be allowed to be filed at this belated stage.

e) The proposed additional document Nos.5 and 6 are screenshots from the defendants Facebook page and description of MANGALDEEP App in Google Play Store's website, which were filed by the plaintiff during the pendency of the interim application. Therefore, it is an admitted fact that documents Nos.5 and 6 were in plaintiff's possession even at the time of filing of the suit. Therefore, the said documents cannot be allowed to be received at this belated stage. Only to protract the



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proceedings, the plaintiff has filed this application. The plaintiff has not provided reasonable cause for non filing of the documents at the time of filing of the suit and therefore, the present application cannot be entertained at this belated stage.

5. The learned counsel for the applicant / plaintiff reiterated the contents of the affidavit filed in support of this application and would submit that reasonable cause has been shown by the applicant / plaintiff for not filing the documents at the time of filing of the suit along with the plaint. He would submit that since the documents were not traceable, the said documents could not be filed along with the plaint. He would also submit that no prejudice would be caused to the respondent / defendant since issues are yet to be framed by this Court and the present application has been filed prior to the framing of issues by this Court.

6. It is also submitted by the learned counsel for the plaintiff that the additional document Nos.4 and 5 which are sought to be received are all documents from the Facebook page of the defendant and therefore the defendant should not have any objection for the plaintiff filing those



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documents. Further, he would submit that the other documents sought to be received are public documents for which, the defendant should not have any objection.

7. The learned counsel for the plaintiff also relied upon the very same decision of the Hon'ble Supreme Court, relied upon by the learned Senior Counsel appearing for the respondent / defendant in the case of ***Sudhir Kumar Alias S. Baliyan vs. Vinay Kumar G.B. reported in 2021 13 SCC 71*** and would submit that even in the said decision it has been made clear in paragraph No.9.6 that the rigour of establishing the reasonable cause for non-filing along with plaint may not arise in a case where the additional documents sought to be produced/relied upon were discovered subsequent to the filing of the plaint.

8. Relying upon the said judgment, the learned counsel for the applicant / plaintiff would submit that since the documents were untraceable earlier, the same could not be filed along with the plaint. Therefore, he would submit that sufficient cause has been shown by the applicant / plaintiff for allowing this application seeking for reception of additional documents. He would also submit that since this application



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has been filed prior to the framing of issues, no prejudice will be caused to the defendants as allowing this application will not delay the trial.

9. On the other hand, Mr.A.L. Somayaji, learned Senior Counsel, assisted by Mr.Arun C. Mohan, learned counsel appearing for the defendant would reiterate the contents of the counter affidavit filed by the respondent / defendant to this application and would submit that the applicant / plaintiff has not provided reasonable cause as required under Order XI, Rule 1(5) of CPC for allowing this application. He would submit that no foundation has also been laid by the plaintiff through the pleadings in the plaint for enabling this Court to grant leave for the plaintiff to file the additional documents disclosed in the judges summons filed along with this application. In support of his contention that the present application is not maintainable, he drew the attention of this Court to the following judgments :-

a) The judgement of the Hon'ble Supreme Court, also relied upon by the learned counsel for the applicant / plaintiff in the case of ***Sudhir Kumar Alias S. Baliyan vs. Vinay Kumar G.B. reported in 2021 13 SCC 71*** and in particular, he drew the attention of this Court to paragraph Nos.9.5 and 9.6 of the said



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judgment and would submit that since the documents were very much available with the plaintiff even at the time of filing of the suit, the question of granting leave by this Court to the plaintiff for reception of additional documents at this belated stage will not arise. He also submitted that adequate averments have not been made in the plaint with regard to the documents for which the leave is sought for by the plaintiff in this application. He drew the attention of this Court to the relevant paragraphs in the plaint with regard to the said submission. He also drew the attention of this Court to Order 11 Rule 1(4) and Order 11 Rule 1(5) of CPC as applicable to the Commercial Courts Act, 2015 and would submit that the plaintiff has not satisfied the requirements and hence the present application is not maintainable.

b) A decision of the Division Bench Judgement of the Madras High Court in the case of *Tirumala Milk Products Private Limited, rep. by its Manager (Legal) S. Mukundh vs. Tirumala Daairy Limited, rep. by its Director Suresh Dnyanobarao Kute and Others reported in 2022 SCC Online Mad 461* which has followed the decision of the Hon'ble



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Supreme Court in ***Sudhir Kumar's*** case referred to supra.

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c) A decision of a learned single Judge of this Court in the case of ***Aarur Tamilnadan vs. S. Shankar and Ors. reported in MANU/TN/2675/2021.***

10. Relying upon the aforesaid decisions, learned Senior Counsel for the respondent / defendant would submit that the instant application filed by the applicant / plaintiff is not maintainable and has to be dismissed.

Discussion :

11. The following are the undisputed facts :-

a) Issues are yet to be framed in the suit by this Court

b) The following averments have been made in the plaint.

i) paragraph No.8 of the plaint states that

8. During the course of its business, the said predecessor of Plaintiff adopted the now well reputed "CYCLE BRAND THREE IN ONE" trademark in respect of agarbathis. The said mark was first adopted by the Plaintiff's predecessor as early as in the year 1981.

ii) paragraph No.14 of the plaint states that



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*14. The Plaintiff states that both its predecessor in title and itself have done and are still doing extensive business all over the world including India using the above said trademarks/artistic works **CYCLE BRAND THREE IN ONE** label with its distinctive colour combination / colour scheme.*

iii) paragraph No.18 of the plaint states that

*“.....The Plaintiff has further carefully watched the market for potential infringers and has also taken successful legal actions against such infringers of their intellectual properties including the said **CYCLE BRAND THREE IN ONE** label with its distinctive colour combination/ colour scheme of orange and yellow. Further, the Plaintiff has also published public caution notices in various reputed national daily newspapers and magazines, informing the public about the rights vested with the Plaintiff in respect of its intellectual property including its trademarks, warning potential infringers from usurping or violating their rights and cautioning the general public not to fall into the trap of such potential infringers by buying their spurious and counterfeit goods”.*

iv) paragraph No.19 of the plaint states that

*“.....The plaintiff humbly submits that the said **CYCLE BRAND THREE IN ONE** label with its distinctive colour combination / colour scheme of orange and yellow has become well-known trademark within the meaning of Section 2(1)(zg) of the Act.”*



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12. The orders passed by the trademark Registry sought to be received as additional documents by this Court are all public documents.

The general public can apply for the same and obtain certified copies.

13. The learned Senior Counsel for the respondent / defendant vehemently opposes the leave sought for by the plaintiff in this application by stating that no reasonable cause has been shown by the plaintiff for filing the documents at this belated stage, that too when a direction has been issued by this Court for filing of draft issues by both the learned counsels.

14. It is settled position of law that when a foundation has been made through the pleadings in the plaint with regard to the documents for which leave is sought for, this Court will have to entertain the application seeking permission of this Court to file additional documents provided, reasonable cause is shown.

15. Order XI, Rule 1(5) of the CPC as applicable to the Commercial Courts Act, 2015 also makes it clear that if reasonable cause is shown, this Court is having the power to grant leave for receiving



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additional documents. In the instant case, the plaintiff has disclosed in the affidavit that only due to the documents being untraceable and only on account of the urgency in filing of the suit, the said documents could not be filed along with the plaint.

16. The Hon'ble Supreme Court in the decision relied upon by both the learned counsels viz., ***Sudhir Kumar's*** case also makes it clear that rigour of establishing the reasonable cause in non-disclosure along with plaint may not arise in the case where the additional documents sought to be produced/relied upon are discovered subsequent to the filing of the plaint.

17. Admittedly in the instant case, a categorical assertion has been made by the plaintiff that documents could not be filed along with the plaint since the same were untraceable at the time of filing of the suit. Therefore, it is clear that the documents for which the leave is sought for by the plaintiff were discovered, only subsequent to the filing of the suit by the plaintiff. No contra evidence has also been produced by the respondent / defendant that the said documents were very much available with the plaintiff and deliberately the plaintiff had not filed the



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same at the time of filing of the suit. While that be so, this Court has to be believe the statement made by the plaintiff that the documents were untraceable at the time of filing of the suit. Therefore applying the yardstick as laid down by the decision of the Hon'ble Supreme Court in ***Sudhir Kumar's*** case referred to supra, this Court is of the view that since the documents were discovered by the plaintiff only subsequent to the filing of the suit and since sufficient reasons have been given by the plaintiff for not filing of the same along with the plaint, this Court will have to entertain this application with regard to the first document viz., the invoice of the year 1981. Further it is to be noted that in the plaint a specific averment has been made that the plaintiff has been dealing with the product under the trademark since 1981 and the invoice is also of the year 1981.

18. Insofar as the decision of the Division Bench of this Court relied upon by learned counsel for the respondent / defendant in the case of ***Tirumala Milk Products Private Limited,*** is concerned, the said decision has also followed the decision of the Hon'ble Supreme Court in ***Sudhir Kumar's*** case referred to supra. Therefore, since the plaintiff has shown reasonable cause for non filing of the documents for which



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leave is sought for in this application at the time of filing of the suit, applying the principles laid down in the said decision as well, this application has to be allowed.

19. Insofar as the third decision relied upon by the Senior Counsel appearing for the defendant in the case of *Aarur Tamilnadan vs. S.Shankar and Ors. reported in MANU/TN/2675/2021* is concerned, the said decision involved a case where an application for reception of additional documents was filed after the framing of issues, whereas in the present case, the application has been filed prior to framing of issues and therefore, the said decision has no applicability to the facts of the instant case.

20. Insofar as the orders passed by the trademark Registry, which is also sought to be received as additional documents by the plaintiff are concerned, the said documents are public documents. The general public can apply for a certified copy of the same and there is no restriction in applying for the same. As seen from the plaint averments, the foundation has also been laid through the pleadings in the plaint for filing the additional documents at this stage which could not be filed



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earlier on account of its non traceability at the time of filing of the suit.

Furthermore, no prejudice would be caused to the respondent / defendant, if the documents which are sought to be received by way of additional documents are allowed to be received and marked as Exhibits subject to its admission, proof and relevancy.

21. Insofar as document Nos.5 and 6 are concerned, the applicant / plaintiff had relied upon the same at the time of arguing the interlocutory application. However, the same was not filed along with the plaint. Documents Nos.5 and 6 are the Facebook page of the defendant. No prejudice would be caused to the respondent / defendant, if the said documents are allowed to be received and marked as Exhibits subject to its admission, proof and relevancy.

22. The respondent / defendant is always having the liberty to cross examine the plaintiff's witness with regard to the admissibility, relevancy and veracity of the documents during the course of trial and also question the same during the time of arguments.



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23. For the foregoing reasons, this application is allowed as prayed for and the documents disclosed in the judges summons filed along with this application are allowed to be received and marked as Exhibits subject to its admission, proof and relevancy.

24. In case, the respondent / defendant has any objection for marking of any of the additional documents, the learned Additional Master is directed to record the objections and thereafter proceed with the trial and it is made clear that the documents are allowed to be received and marked as Exhibits only subject to its admission, proof and relevancy.

25. Post the matter for filing of Affidavit of Admission / Denial of documents and for framing issues on **12.02.2024**.

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