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A.No.1978 of 2024in C.S.(COMM. DIV.) No.255 of 2023

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P.VELMURUGAN. J.

This application is filed to permit the applicant/plaintiff to place on record the additional documents in the present suit, enlisted hereinunder on behalf of the applicant/plaintiff:

S.No.	Date	Description	Nature
1	24.01.2006	Copy of the pleadings and documents in C.S.(OS)153 of 2006	Copy
2	07.03.2012	Copy of the pleadings and documents in C.S.(O.S)660 of 2012	Copy
3	30.03.2012	Copy of the order dated 30.03.2012 along with Annexure of the “grey can”.	Copy

2. The case of the applicant is that the plaint in respect of the above suits are past civil proceedings inter se the same parties herein, filed in the year 2006 and 2012. The facts pertaining to the suit before the Delhi High Court in C.S.(OS) No.660 of 2012 has already been disclosed by the



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applicant/plaintiff in the plaint and in the common affidavit in Paragraph Nos.23 and 29 and a copy of the final order dated 30.03.2012 passed in C.S.(OS) No.660 of 2012 was filed as Plaint Document No.13. The applicant/plaintiff only filed copy of the order dated 30.03.2012 with the plaint as it records the undertaking of the respondent/defendant to replace the “Black Can” with a “Grey Can” in the advertisement in the said suit proceeding. During the course of arguments on 03.01.2024 in the interlocutory application, the respondent submitted that the facts involved in the suit bearing C.S.(OS) No.660 of 2012 are identical to the present suit filed by the applicant/plaintiff and asserted that the said suit proceedings related only to an alleged design infringement and not disparagement. Therefore, it becomes imperative and relevant to place on record the pleadings raised by the parties in C.S.(OS) No.660 of 2012. The respondent/defendant also relied on the order dated 15.02.2006 in C.S.(OS) No.153 of 2006 before the Delhi Court and made submissions



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contrary to pleadings and facts on record in the said suit. Therefore, the applicant/plaintiff sought to place all the pleadings raised by the parties in C.S.(OS) No.153 of 2006 on record through his written submissions. In order to further delay the hearing of the application filed by the applicant for interim reliefs, the respondent filed two applications to reject the above mentioned documents bearing A. Nos.567 and 568 of 2024 on the ground of non-compliance of Order XI Rule 5 of CPC 1908. The applicant has filed the above said documents along with the written submission to bring out the correct position of facts, claims and pleadings in such proceedings which were otherwise wrongly presented by the respondent during the arguments on 03.01.2023. Further, the said pleadings and documents in both the suit proceedings before the Delhi High Court were in knowledge and possession of the respondent/defendant since the years 2006 and 2012. The facts regarding both the suits in Delhi High Court are disclosed in the plaint. However, the documents relating to both the suits in Delhi Court,



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which are sought to be filed, were not filed by the applicant along with the plaint while instituting the suit as these documents were historic dating back to 2006 and 2012 and the copies were not readily available to the applicant/plaintiff. Now the applicant/plaintiff is compelled to file copies of those pleadings and documents in this Court for better appreciation of the claims, facts pleaded in those proceedings based on which the Delhi Court had passed the orders therein and also to highlight the inconsistency in the respondent's arguments. If the documents are accepted no prejudice would be caused.

3. The respondent has filed counter/objections stating that the pleadings in the application for interim injunction are complete. The applicant has also filed its written statement and the same has been taken on record vide order dated 27.03.2024. Thus, the pleadings in the suit also stand complete. The applicant filed two volumes of additional documents on 12.01.2024, along with written submissions, without any application



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seeking permission to place the same on record. Therefore, the respondent filed applications seeking rejection of the said documents bearing A.No.567 and 568 of 2024 which was first listed before this Court on 02.02.2024. At the time of hearing in the present proceedings on 02.02.2024, the learned counsel for the applicant categorically made a statement before this Court that they will not rely on the additional documents filed on 12.01.2024. Therefore, the matter proceeded was without the said documents being considered by this Court and the applicant filed their revised written submissions on 18.03.2024. The matter was listed for arguments on 05.04.2024. Subsequently, the respondent was served with the present application seeking permission to place on record the very same additional documents.

4. The learned Senior counsel for the applicant submitted that the facts pertaining to the suit before the Delhi High Court in C.S. (O.S. No.660 of 2012) was already disclosed by the applicant in the plaint and



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common affidavit itself and a copy of the final order dated 30.03.2012

passed in C.S. (OS) No. 660 of 2012 was also filed as Plaint Document

No.13. The applicant filed only a copy of the order dated 30.03.2012 with

the plaint as it records the undertaking of the respondent to replace the

“Black Can” with “Grey Can” in the advertisement in the said suit

proceedings. Since the respondent has now taken a different stand, the said

order dated 30.03.2012 is necessary to be filed. Since the respondent has

taken stand otherwise against the undertaking given by the respondent in

the said proceedings, the applicant is forced to file the said documents as

additional evidence. Therefore, it falls under Order XI Rule 1 C(ii) CPC.

The learned counsel further submitted that the document is produced with

the written submission of the original application for interim order and

therefore, the application is very much maintainable. Since the applicant

disclosed all the facts regarding the suit proceedings before the Delhi High

Court, there is no suppression of fact. Therefore, the application to be



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allowed to receive the documents.

5. The learned Senior counsel for the respondent submitted that the documents were in the power, possession, control or custody of the applicant. Under Order XI Rule 1 (3) of Amended CPC the plaintiff mandatorily has to have a declaration on oath from the plaintiff that all the documents in the power, possession, control or custody of the plaintiff pertaining to the facts and circumstances of the pleadings initiated by him have been disclosed and copies thereof annexed with the plaint and that the plaintiff does not have any other documents in his power, possession, control or custody. The applicant has indeed filed the statement of Truth on 16.10.2023 along with its plaint and subsequently, he cannot file these documents. Therefore, the respondent filed two applications to reject those documents from the file of the Court and subsequently, the applicant has come forward with the present application. The documents produced by the plaintiff falls under Order XI Rule 1(1)(b) of Amended CPC and the



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only exception to the said Rule is under Order XI Rule 1(1)(c) of Amended CPC. The applicant has not made out his case that the documents falls under the said exception which is under order XI Rule 1(1)(c) of Amended CPC since the said documents were in the knowledge, power, possession, control or custody of the applicant even at the time of filing the present suit and the applicant deliberately suppressed the same and not produced along with the plaint. Therefore, the applicant cannot file these documents at later point of time. Hence, the application filed by the applicant is liable to be dismissed.

6. Heard both sides and perused the materials available on record.

7. Without going into the merits of the case, the fact remains that the applicant has filed the present suit seeking reliefs of permanent injunction restraining the defendant from alleged acts of infringement, unfair trade practice, dilution and disparagement through the impugned advertisements and also filed an application for interim injunction in



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which, the respondent entered appearance and also filed their counter and those applications were taken for arguments and disposal. After they submitted their arguments, the applicant filed the above said two documents along with written submission. Hence, the respondent has filed two applications seeking rejection of the said documents in A.No.567 and 568 of 2024 and one of the contentions raised by the respondent is that though the documents were within the power, possession control or custody of the the applicant, he had not produced the same with the plaint and they have produced the said documents along with the written submission even without filing any application. Further, the production of documents does not fall under the exception of Order XI Rule 1(1)(c) of Amended CPC and Order XI Rule 1(1)(b) of Amended CPC. All the documents have to be filed along with the plaint and in case they were not able to file for any reason, they should have filed the documents within 30 days on filing the application.



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8. Under Order 11 Rule 1(5) CPC, the plaintiff shall not be allowed to rely on the documents which were in the plaintiff's power, possession, control or custody and not disclosed along with the plaint or with the extended period of 30 days in case of urgent filing, save and except by leave of the court and such leave shall be granted only upon the plaintiff establishing the reasonable cause for non disclosure along with the plaint and the only exception under Order XI Rule 1(4) of Amended CPC is at the time of filing above suit and in such case subject to grant of such leave by Court, the plaintiff can file such additional documents within 30 days of filing the suit along with a declaration of oath that the plaintiff has produced all the document in its power, possession, control or custody pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents in its power, possession, control or custody. The applicant has not sought leave of the Court under XI Rule 1(4) of Amended CPC, whereas as already



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stated that the applicant filed the documents only with the written submission.

9. Whether documents filed along with the written submission in the original application can be allowed or not, for the original application filed by the applicant, all the documents can be relied on or not can be decided in that application filed by the respondent for rejection of the documents.

10. However, in this application, the applicant has clearly stated that the facts and relevant documents have been submitted along with the plaint and since the respondent had subsequently taken a stand that they have suppressed the impact of the order passed by the Delhi High Court dated 30.03.2012, in order to clarify the same, all the documents related to the proceedings of C.S.(OS) No.660 of 2012 and C.S.(OS) No.153 of 2006 have to be received and therefore, the present application is filed.



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11. Therefore, considering the entire facts and circumstances and also a reading of the plaint, written statement and the affidavit of the application and the counter affidavit in all the applications, this Court finds that this application falls under Order XI Rule 1 (1) (c) (ii) of Amended CPC and not under Order XI Rule 1 (1)(b) of Amended CPC. Therefore, the contention of the learned counsel for the respondent is not acceptable.

12. Accordingly, this application is allowed.

Post the suit on 18.04.2024.

15.04.2024

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Note: Issue order copy on 17.04.2024.



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15.04.2024