



A.Nos.3408 and 4127 of 2024
in C.S.No.669 of 2015

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SENTHILKUMAR RAMAMOORTHY,J

By Application No.3408 of 2024, the applicant/plaintiff seeks permission to exhibit the documents described in the schedule to the Judge's summons. Out of the nine documents specified therein, the first eight documents are legal use certificates pertaining to various trade marks for which the plaintiff has obtained registrations. The 9th document is a certificate of incorporation issued on 21.12.2016 consequent to the change in the name of the plaintiff.

2. This application is opposed by the defendants on the ground that all these registrations were obtained between the years 2004 and 2007. Consequently, it is stated that the legal use certificates should have been obtained before the suit was filed and that reasonable cause has not been shown for seeking to exhibit the documents at this juncture.

3. In response, learned counsel for the plaintiff submits that the plaint



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makes reference to each of these registered trade marks and that the registration certificates were filed along with the plaint. He further submits that the legal use certificates were obtained before commencement of the trial. Therefore, he contends that reasonable cause has been shown.

4. On perusal of the plaint, it is clear that the registration certificates pertaining to each of the relevant trade marks were filed along with the plaint. Since legal use certificates are necessary for reliance in legal proceedings, the plaintiff seeks to exhibit these documents. Undoubtedly, the plaintiff could have applied for these legal use certificates at an earlier point of time without awaiting the trial stage. Nonetheless, in view of the fact that the registration certificates were filed at the outset, great prejudice would be caused unless the plaintiff is permitted to place these certificates on record in course of trial. Since this process has been initiated belatedly, the plaintiff should be put on terms. Subject to payment of a sum of Rs.25,000/- (Rupees Twenty five thousand only) as costs to the defendants within two weeks from the date of receipt of a copy of this order, A.No.3408 of 2024 is allowed. This order is, however, without prejudice to the defendants' right to



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file an affidavit of admission/denial in respect of these documents and to raise objections in course of trial.

5. By Application No.4127 of 2024, the defendants seek a direction to reject the proof affidavit of P.W.1. The defendants rely upon an earlier order of this Court in A.No.4983 of 2021 in a summary judgment application. The defendants contend that prayer (c) was summarily rejected and that the plaintiff was permitted to prosecute the suit in respect of prayers (a), (b) and (d) to the limited extent of seeking to establish that the 1st defendant is liable on account of the use of suggestion tools. In view thereof, learned counsel for the applicants/defendants contends that the proof affidavit of Mr.S.John Vijayakumar is prolix and that it is a virtual reproduction of the plaint.

6. In response, learned counsel for the plaintiff contends that the proof affidavit deals with the various registrations that the plaintiff has obtained. It thereafter refers to the role of the 1st defendant as a domain name registrar. He further submits that it also deals with the use of suggestion tools by the defendants and the deceptively similar alternatives suggested through that



process. According to learned counsel, the affidavit by way of evidence of Mr.S.John Vijayakumar is germane to the relief claimed in the suit and that no case is made out either to reject the proof affidavit or even a part thereof.

7. Under Rule 6 of Order XV-A of the Code of Civil Procedure, 1908, as applicable to commercial disputes, this Court is empowered to either reject an affidavit of evidence or strike off parts thereof which are irrelevant, inadmissible or argumentative. Similarly, under Rule 6 of Order XIX, the Court is empowered to strike out the affidavit or parts thereof if the affidavit is merely a reproduction of the pleading or contains legal grounds. This application should be tested against this benchmark.

8. The proof affidavit of Mr.S.John Vijayakumar runs to about 48 paragraphs and spans about 23 pages. On perusal thereof, I find that paragraphs 2 to 6 deal with the plaintiff's registered trade marks, the expenditure incurred towards advertising and the sales turnover. From paragraphs 7 to 10, domain names and their importance is adverted to. From paragraphs 21 onwards, the defendant's role as a domain name registrar is



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dealt with. The computer programme by which suggestions are offered is dealt with between paragraphs 31 and 38. In a Court of first instance, some latitude should be extended to the parties to lead evidence while also bearing in mind the requirement that materials which are irrelevant or argumentative are eschewed. Although the proof affidavit could have been more concise, I am unable to conclude that anything completely irrelevant or argumentative is set out therein. Consequently, A.No.4127 of 2024 is rejected.

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