Reserved on: 19.06.2024	Pronounced on: 28.06.2024

(TM)A.Nos.43 & 44 of 2024
in (T)OP(TM) No.424 of 2023

P.B.BALAJI, J.

The Petitioner in the Trademark Original Petition has taken out the present applications, seeking permission to file additional documents, namely, Balance Sheet/ Annual Report and Sales invoices and VAT register and to recall and reopen the petitioner's witness, P.W.1 for further chief examination, for the purposes of marking the Balance Sheet/Annual Report as Ex.P17 and Sales Invoice and VAT register as Ex.P18.

2.I have heard Mr. K.S. Saravanan, learned counsel for the applicant and Mrs.Suba Shiny, learned counsel for the 1st Respondent and Mr.K.Subbu Ranga Bharathi, learned Central Government Standing Counsel for the 2nd Respondent in both the applications.

3.According to learned Counsel for applicant in both the applications, the Original Petition has been filed seeking rectification by way of removing the respondent's registered trademarks in Class 11. The learned counsel for the applicant further submits that in respect of the petitioner's documents, 17 documents were filed along with the proof affidavit, marking of 2 documents were objected by the learned counsel for the 1st Respondent on the ground that the said documents were fabricated. It is for the purpose of marking these 2 documents that the present applications have been taken out.

4.According to the learned counsel for the petitioner, these additional documents would establish the case of the petitioner and that they have been in business right from 1994 onwards and therefore, they are vital documents for establishing the petitioner's claim in the Original Petition.

5.Per contra, Mrs.Suba Shiny, learned counsel for the 1st respondent would submit that the applications are filed only to protract the proceedings and the documents sought to be marked are fabricated documents. She would also submit that none of the invoices or the balance sheet reflect any transaction in the year 1994 and 1995 and further, the VAT register filed and sought to be marked does not have any date and therefore, she would submit that these documents would not in any way support the case of the applicant/petitioner. She would also further submit that there is no whisper about the balance sheet or the VAT register in the rectification petition or the proof affidavit of P.W.1 and therefore, the applications should not be entertained.

6.I have carefully considered the submissions advanced by the learned counsel on either sides.

7.Admittedly, the applicant/petitioner is in the witness box and he seeks to mark the Balance Sheet/Annual Report, Sales Invoices and VAT register as additional documents on the side of the petitioner. The question whether the documents would support the case of the applicant/ petitioner or not cannot be gone into at this juncture. Admittedly, the applications are also taken out immediately after the objections raised by the learned counsel for the respondents and I do not find any undue delay on the part of the applicant/petitioner in taking out these applications. If at all the documents, which are sought to be produced, are not in any manner supporting the petitioner's claim, then the 1st respondent can always take advantage of the same. Therefore, I see no serious prejudice caused to the respondents if these applicants are ordered as prayed for, especially, since the respondents will have full and fair opportunity to confront the witness with these documents during cross examination.

8.For all the above reasons, these applications are allowed and the additional documents, namely the Balance Sheet/Annual Report, Sales Invoices and VAT register are permitted to be received in evidence and marked subject to admissibility, proof and relevancy.

9.Post the matter before the Additional Master IV on 08.07.2024.

28.06.2024

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P.B.BALAJI, J,

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Pre-delivery order made in
(TM)A.Nos.43 & 44 of 2024
in (T)OP(TM) No.424 of 2023

28.06.2024