(TM)A/71/2024
and (T)OP(TM)/496/2023
(ORA/SR.8/2018/TM/CHN)

SENTHILKUMAR RAMAMOORTHY,J

By this application, the applicant seeks permission to bring on record the documents mentioned in Schedule-A. The first document mentioned therein is a general power of attorney dated 04.07.2024. The second is a bunch of invoices relating to the period 2005-2023. The third is the applicant / first respondent's product packaging.

2. Learned counsel for the applicant submits that the general power of attorney is being filed because the applicant is unable to travel to Chennai to adduce evidence and has appointed an agent for such purpose. As regards the invoices, he submits that they were not traceable at the time of filing of counter statement and that these documents are relevant and material to establish use of the mark since 2005. As regards the third document, he submits that it was

inadvertently not filed while filing the counter statement.

3. Learned counsel for the first respondent vehemently opposes the application. She points out that the matter was posted for recording the evidence of the first respondent on more than one occasion after this Court prepared the schedule in such regard on at least two instances. She relies on the judgment of the Hon'ble Supreme Court in *Mohinder Kumar Mehra v. Roop Rani Mehra and others (2018)2 SCC 132*, particularly paragraphs 17 and 20 thereof, for the proposition that an application of this kind should not be entertained after trial has commenced. She also relies on the judgment of the Bombay High Court in *Khanna Rayon Industries Pvt. Ltd. v. Swastik Associates and others, 2023 SCC OnLine Bombay 1372*, particularly paragraph 32 thereof, for the proposition that reasons such as oversight and inadvertence do not constitute reasonable cause for non disclosure of documents at the appropriate stage. In support of the contention that negligence in filing the documents

earlier does not constitute reasonable cause, she relies on the judgment of the Delhi High Court in *Bela Creation Pvt. Ltd. v. Anuj Textiles, 2022 SCC OnLine Delhi 1366.*

4. In procedural matters of this nature, standards such as "reasonable cause", "just cause" or "sufficient cause" are used instead of rules so as to lend the degree of flexibility which is required in such matters. The question as to whether there is reasonable cause or just cause or sufficient cause is to be decided contextually.

5. In the case at hand, the first respondent asserts use of the impugned mark since 2005 in the counter statement. The second document, which is proposed to be filed subject to permission, is in the form of invoices for the period from 2005 to 2023. Undoubtedly, as contended by learned counsel for the petitioner, such invoices should have been placed on record when the counter statement was

filed. Notwithstanding this position, it is clear that great prejudice would be caused to the applicant / first respondent if these documents are brought on record given the nature of defence pleaded by the said respondent. When the facts and circumstances are considered cumulatively, including the evidently belated stage at which the present application has been lodged, I am inclined to allow the application subject to imposing terms.

6. For reasons aforesaid, this application is allowed on the following terms and conditions:

(i) The applicant / first respondent shall pay costs of Rs.40,000/- (Rupees Forty Thousand only) to the first respondent within ***two weeks*** from the date of receipt of a copy of this order.

(ii) The first respondent / petitioner is permitted to file an affidavit of admission / denial in respect of these additional documents.

(iii) The applicant is permitted to file these documents subject to objections *inter alia* on the grounds of admissibility, relevance and proof.

7. List the matter on 29.08.2024.

08.08.2024

rna

SENTHILKUMAR RAMAMOORTHY,J

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