

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision : 6th March, 2023**

+ **CS(COMM) 434/2017**

BENNETT COLEMAN & CO. LTD. Plaintiff
Through: Mr. Hemant Singh with Ms. Mamta Rani Jha, Mr. Shakti Priyan Nair and Ms. Pragya Jain, Advocates.

versus

ARG OUTLIER MEDIA PVT LTD & ORS. Defendants
Through: Ms. Malvika Trivedi, Senior Advocate with Mr. Gaurav Dudeja, Ms. Bani Dixit, Mr. Dhruval Singh, Mr. Shailendra Slaria and Ms. Sujal Gupta, Advocates.

**CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL**

AMIT BANSAL, J. (Oral)

I.A. 1464/2018 (O-XI R-5 of the CPC)

1. The present application has been filed on behalf of the plaintiff under Order XI Rule 5 of the Code of Civil Procedure, 1908 (CPC) as applicable to commercial suits under the Commercial Courts Act, 2015 for placing on record additional documents.
2. Reply has been filed on behalf of the defendants opposing the present application. Rejoinder thereto, has been filed on behalf of the plaintiff.
3. It is the case of the plaintiff that the aforesaid additional documents were filed by the plaintiff on 17th October, 2017 on the same date as the

replication. Counsel for the plaintiff submits that the filing of the aforesaid documents was necessitated on account of the statement made on behalf of the defendants, as noted in the order dated 26th September, 2017, that the defendant no.1 was not in existence at the time of the filing of the present suit and some of the additional documents sought to be filed are to demonstrate that the defendant no.1 was in existence at the time of filing of the present suit.

4. Yet another justification given on behalf of the plaintiff for filing additional documents is to demonstrate the contrary stands taken by the defendants in their written statements and in the replies to the examination reports of the Registry. It is stated that in the written statements the defendants have taken a stand that the trademarks/taglines, which are the subject matter of the present suit are descriptive and generic in nature. However, in various replies to the examination reports of the Registry, the defendants have taken a contrary stand. Therefore, it is necessary to place the aforesaid documents on record. Reliance is placed on Order XI Rule (1) (c)(ii) of the CPC.

5. *Per contra*, senior counsel appearing on behalf of the defendants submits that since the defendant no.1 has already been deleted from the array of parties, the documents with regard to the defendant no.1 are no longer relevant in the present suit. It is further submitted that there is no contradiction in the stand taken by the defendants before the Trade Mark Registry and the written statement filed in the present suit. It is also contended that the documents now sought to be filed were in the power, possession, control and custody of the plaintiff at the time of filing of the present suit and therefore, ought to have been filed along with the suit.

Reliance is being placed on the judgment of the Supreme Court in *Sudhir Kumar v. Vinay Kumar*, 2021 SCC OnLine SC 734 and the judgment of a Co-ordinate Bench of this Court in *Nitin Gupta v. Taxmaco Infrastructure & Holding Ltd.*, 2019 SCC OnLine Del 8367.

6. I have heard the counsel for the parties.

7. A perusal of the additional documents sought to be placed on record by the plaintiff would show that the said documents are the examination reports of the Registry and the responses thereto by the defendants. All the aforesaid documents pertain to the defendants. Attention of the Court has been drawn by the counsel for the plaintiff to paragraph 18 of the written statement filed by the defendant no.2, where a specific stand has been taken by the defendants that the trademark/taglines, which are the subject matter of the present suit are descriptive in nature. The aforesaid contention has been rebutted by the plaintiff in its replication. In order to meet the aforesaid contention of the defendants, the plaintiff seeks to place on record the aforesaid documents to show that in their replies to the examination reports, the defendants have claimed the trademark to be distinctive. The aforesaid documents are covered within the ambit of sub-rule (1)(c)(ii) of Rule (1) of Order XI of the CPC in terms of which the plaintiff would be entitled to file the documents in response to a case set up by the defendants after filing of the plaint. Therefore, there is no merit in the submission of the defendants that the aforesaid documents were available in public domain and could have been filed along with the plaint. Even if the said documents were available in public domain at the time of filing of the suit, the need for filing the aforesaid documents arose only on account of the stand taken by the defendants in the written statement.

8. Insofar as the objection of the defendants that the documents in respect of the defendant no.1 are not relevant as the defendant no.1 has been deleted from the array of the parties, it is the contention of the plaintiff that despite the defendants claiming that the defendant no.1 was not in existence, certain replies were filed on behalf of the defendant no.1 before the Trade Mark Registry. Therefore, the aforesaid documents are relevant for determining whether an incorrect stand has been taken by the defendant or not.

9. In *Sudhir Kumar* (supra), relied upon by the defendants, the Supreme Court was dealing with the provisions of Order XI Rule 1(4) read with Order XI Rule 1(5) of the CPC in respect of filing additional documents after filing of the plaint in case of urgent listings. It was further observed that the rigour of establishing reasonable cause for non-disclosure of the documents along with the plaint may not arise in cases where additional documents are discovered subsequent to filing of the plaint. The aforesaid judgment does not in any manner curtail the power of the Court to permit additional documents to be taken on record if a party gives sufficient cause for not filing the said documents along with the plaint.

10. The judgment in *Nitin Gupta* (supra) relied upon by the defendants has been distinguished in other judgments of the Co-ordinate Benches of this Court in *Hassad Food Company Q.S.C. v. Bank of India*, 2019 SCC OnLine Del 10647 and *Mahesh Chaudhri v. IMV India Pvt. Ltd.*, 2019 SCC OnLine Del 9813 on the ground that the issues in the said suit had already been framed and the documents were inconsistent with the pleadings in the suit. In both the aforesaid cases, the additional documents were

allowed to be taken on record on the ground that the issues were yet to be framed in the suit and additional documents sought to be filed by the plaintiff were relevant for the adjudication of the case.

11. The judgments in *Hassad Food Company* (supra), *Mahesh Chaudhri* (supra) and *Nitin Gupta* (supra) were considered by me in *Khurmi Associates (P) Ltd. v. Maharishi Dayanand Co-Operative Group Housing Society*, 2022 SCC OnLine Del 1011. Relying upon the judgments in *Hassad Food Company* (supra) and *Mahesh Chaudhary* (supra), the additional documents were permitted to be taken on record on the ground that issues were yet to be framed in the suit and the documents were in support of the pleadings of the plaintiff company.

12. The facts in the present case are very similar to the facts in *Khurmi Associates* (supra). Issues are yet to be framed in the suit. It is an admitted position that the additional documents were filed on behalf of the plaintiff on the same date as the replication. A perusal of the pleadings in the suit would also show that the aforesaid documents sought to be filed are not contrary to the pleadings of the plaintiff in the suit. In my considered view, the aforesaid documents would be relevant for the adjudication of the present suit.

13. Accordingly, the present application is allowed and the plaintiff is permitted to place the additional documents on record, subject to payment of costs of Rs.20,000/- to the defendants.

CS(COMM) 434/2017

14. Affidavit of admission/denial in respect of additional documents

permitted to be taken on record shall be filed by the defendants within three weeks from today.

15. List before the Joint Registrar on 19th April, 2023 for admission/denial of the documents.

AMIT BANSAL, J

MARCH 6, 2023

at

