



2024:DHC:1149



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

% Reserved on: 31st January, 2024
Pronounced on: 07th February, 2024

+ **CS(COMM) 281/2021, I.A. 7377/2021 & I.A. 13421/2023**

TTK PRESTIGE LIMITED Plaintiff

Through: Mr. Hemant Singh, Ms. Mamta R. Jha,
Ms. Akansha Singh and Ms. Saloni
Kasliwal, Advs.

versus

BAGHLA SANITARYWARE PRIVATE LIMITED & ORS.

..... Defendants

Through: Mr. Sanjiv Bahl, Mr. Apoorva Bahl and
Mr. Eklavya Bahl, Advs.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

ANISH DAYAL, J.

I.A. 13421/2023 (under Order XI Rule 5 CPC)

1. This application was filed by plaintiff under Order XI Rule 1(5) of the Code of Civil Procedure, 1908 (“CPC”) as amended by the Commercial Courts Act, 2015 (“Commercial Courts Act”), to place certain additional documents

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on record. Defendants oppose the application and have filed a response to the same. Arguments were addressed by counsel representing the parties.

2. By this application, plaintiff seeks to place the following documents on record:

- (i)** Promotional material pertaining to the trademark PRESTIGE for the period 1968-1986;
- (ii)** CA Certificate showing sales and promotional figures for the year 1959 to 1985 of the predecessor of the plaintiff company being T.T. Limited;
- (iii)** CA Certificate showing sales and promotional figures for the year 1985 to 1989 of the predecessor of the plaintiff company being T.T. Limited;
- (iv)** Unaudited statement of sale and promotional expenses for the year ending 31st March, 1990 pertaining to the predecessor of the plaintiff company being T.T. Limited.

3. Before advertng to the respective submissions of the parties, it would be useful to extract hereinbelow, for ease of reference, a chronology of the relevant dates in these proceedings which have a bearing on the submissions made by the parties:

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Sl. No.	List of Dates	Events
1.	02 nd June, 2021	<p>This suit was filed for infringement of plaintiff's registered trademark 'PRESTIGE' and</p> <p> PRESTIGE logo and copyright infringement of PRESTIGE logo by the defendants, apart from passing off and unfair competition. Plaintiff claimed that they had been using the trademark 'PRESTIGE' in relation to kitchenware, including pressure cookers, continuously, extensively, and exclusively in India since 1955. Around the year 1999, plaintiff</p> <p> logo adopted the distinctive logo with an arc and has been using the same since then. In 2006, plaintiff conceived the</p> <p> label/logo containing the trademark 'PRESTIGE' written in white lettering on a red background with an arc in black color below the word 'PRESTIGE'.</p>

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		<p>‘PRESTIGE’ is the house mark as well as the trademark of the plaintiff.</p> <p>As per plaintiff, defendants were collectively engaged in the business of manufacturing and sale of bath, kitchen fittings and accessories thereof, and were using plaintiff’s registered trademark ‘PRESTIGE’ and providing warranty to customers in that name. It was later found that the trademark ‘PRESTIGE’ was registered in the name of Mr. Surinder Kumar Baghla, partner of defendant no.4 in Class 11. Objection was not taken to defendants carrying on business of manufacturing and sale of sanitaryware or allied and cognate products, but without the use of plaintiff’s registered trademark ‘PRESTIGE’ (both word and device).</p>
2.	04 th June, 2021	<p><i>Ex-parte ad interim</i> injunction was granted by the Court restraining defendants, its directors, partners, associates, and other persons on their behalf, from selling, offering for sale and advertising in any manner, including on the internet and e-commerce platforms, directly or indirectly, any sanitaryware, bath and kitchen</p>

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		fittings, kitchenware, cookware and/or cognate and allied related goods under the logo of the  plaintiff i.e.
3.	26 th July, 2021	A written statement was filed by defendants claiming use of the trademark 'PRESTIGE' since 2005.
4.	7 th September, 2021	Replication filed by plaintiff denying the 2005 claim of the defendants.
5.	29 th August, 2022	Defendants filed I.A. 14694/2022 to place on record additional documents being invoices for the period 2012-2016.
6.	27 th February, 2023	I.A. 14694/2022 was allowed by the Court, <i>inter alia</i> , on the ground that trial in the matter had not commenced.
7.	21 st July, 2023	Plaintiff filed the instant application being I.A. 13421/2023 to place on record additional documents purportedly in rebuttal.

4. In support of the instant application, Mr. Hemant Singh, plaintiff's counsel, submitted that at the time when the written statement was filed by

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defendants, no supporting document was filed. It was only thereafter, in August 2022 through I.A. 14694/2022, that the defendants attempted to place on record additional documents. Even though this application was moved a year after the written statement was filed, it was allowed by the Court *vide* order dated 27th February, 2023. In allowing the same, the Court relied on the decision of the Hon'ble Supreme Court in *Sugandhi & Anr. v. P. Rajkumar*, (2020) 10 SCC 706 and the fact that trial in the suit was yet to commence. Plaintiff's counsel, therefore, submitted that they were justified in filing the instant application in July, 2023, *firstly*, on the basis that this was necessitated as rebuttal to the documents filed by defendants at a later stage; and *secondly*, that it ought to be allowed on the same parameters as were applied by the Court on 27th February, 2023 while allowing defendant's application for additional documents.

5. It was further submitted by plaintiff's counsel that while it had been asserted by plaintiff, in the plaint, that they had been using the trademark 'PRESTIGE' since 1955, much prior to the defendants' claim of 2005; old records evidencing use of the mark 'PRESTIGE' prior to the year 2007 were not readily available when the suit was filed. It was only after defendants filed their written statement that plaintiff searched for old records and discovered relevant documents as being part of a *disposed of* Suit No. 289/08/1991 filed before the District Court, Tis Hazari. Plaintiff applied for certified copies of evidence from the said suit and the additional documents sought to be filed by the instant application are from that set of documents.

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6. Plaintiff's counsel placed reliance on the provisions of Order XI Rule 1(5) of the CPC, which provides as under:

“(5) The plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint.”

7. On this basis, it was pleaded that the test of “reasonable cause” stood satisfied, and that no prejudice would be caused to the defendants since the trial was yet to commence.

8. Defendants' counsel vehemently refuted these arguments and focused heavily on the chronology of events, as noted above, to contend that plaintiff's application was highly belated, *mala fide*, and was an attempt to introduce documents which ought to have been filed or disclosed at the time of filing of the suit. Adverting to the strict deadlines provided under the Commercial Courts Act and resident in the provisions of Order XI Rule 1 CPC, defendants' counsel contended that permission to take these documents on record cannot be given for the asking.

9. Essentially, he contended that the plaintiff did not disclose these documents along with the suit, nor did the plaintiff file it along with the replication in September, 2021. The instant application was moved almost two years after the replication was filed, i.e. in July, 2023, despite there being no reason why the plaintiff did not procure these documents earlier as it was

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clearly within their knowledge (even as per plaintiff's submissions they existed as part of a prior suit). It was the plaintiff's duty to file all documents in their power and possession and on which they sought to rely to prove their claim.

10. Importantly, defendants' counsel drew attention to the stamp on these documents dated 22nd February, 2023, which was prior to the hearing in the defendants' application for additional documents on 27th February, 2023. No statement was made by plaintiff's counsel on that day reflecting their intention to file additional documents. Moreover, they chose not to move the application for another five months, for reasons best known to the plaintiff. Defendants' counsel, therefore, contended that negligence to file documents in support of their claim cannot satisfy the test of "*reasonable cause*" under Order XI Rule 1(5) of the CPC.

11. Counsel for the parties relied on certain decisions. Plaintiff's counsel relied on the decision in *Sugandhi (supra)* and *Vijay Kumar Varshney v. Longlast Power Products Ltd. & Anr.*, 2023 SCC OnLine Del 3775; while defendants' counsel relied on the decision dated 15th May, 2023 by a Single Judge of this Court in *CEC-CICI JV & Ors. v. Oriental Insurance Company Limited*, CS (COMM) 7/2020.

12. Essentially, plaintiff's counsel relied on *Sugandhi (supra)* and *Vijay Kumar Varshney (supra)* to assert the principle that procedural and technical hurdles should not be allowed to come in the way of substantial justice, particularly when no serious prejudice is caused and that, in similar situations,

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for instance in *Vijay Kumar Varshney (supra)*, this Court allowed the documents to come on record.

13. Defendants' counsel in his reliance on *Oriental Insurance Company (supra)* stressed that this Court has been particular and strict in applying the deadlines imposed by the Commercial Courts Act.

14. Before proceeding ahead with the analysis, it may be useful to elaborate upon these decisions adverted to by the parties:

- (i) *Sugandhi (supra)*, a decision of the Hon'ble Supreme Court of 13th October, 2020 pertained to an application filed by the defendants in a civil suit under Order VIII Rule 1-A (3) of the CPC seeking leave to produce additional documents. After adverting to the said provision, the Hon'ble Supreme Court allowed the appeal by the defendant and observed as under in para 9:

“9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a

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lenient view when an application is made for production of the documents under sub-rule (3).”

It is, however, noted that the suit in **Sugandhi** (*supra*) was not a commercial suit and was a normal civil suit. Besides the provisions of Order VIII Rule 1-A (3) of the CPC are reproduced hereunder for reference, which bears out that they are different in scope from Order XI Rule 1(5) of the CPC:

“(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.”

- (ii) In **Vijay Kumar Varshney** (*supra*), a Single Judge of this Court was dealing with an application by the plaintiff under Order XI Rules 1(4) and 1(5) of CPC for producing additional documents in order to rebut the defendant’s stand in the written statement. The same was allowed by the Single Judge in the interest of fairness and as a rebuttal to the claim of prior use by the defendant. However, defendants’ counsel drew attention to the fact that in **Vijay Kumar Varshney** (*supra*), the application in question was filed on 04th January, 2022 just after the plaintiff filed its replication in November, 2021. Further, as evident from para 36 of the said decision, the documents being introduced by the plaintiff in that case were necessary to demonstrate prior use of the mark considering the defendants

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had raised a claim of prior use as well. In the opinion of this Court, the facts in *Vijay Kumar Varshney (supra)* were in a different context than what the plaintiff claims here, particularly in the time frame involved as well as the issue of prior use. These aspects have been further articulated below.

(iii) In *Oriental Insurance Company (supra)*, a Single Judge of this Court has deliberated in detail on Order XI Rule 1(5) CPC and dismissed the application, distinguishing *Sugandhi (supra)*, as well as noting in para 71 that the plaintiffs could have collated the documents before the filing of the suit itself; and the argument that documents were scattered in various offices and could not be collated was only on after-thought. They could not justify the late filing of additional documents.

15. As is evident from the brief analysis made above of the decisions adverted to by the respective counsel, observations of the Hon'ble Supreme Court in *Sugandhi (supra)* do not help the plaintiff. Not only are the observations in para 9 generic in nature but are in context of a normal civil suit where provisions of Order VIII Rule 1A of the CPC applied.

16. With the advent of the Commercial Courts Act, the deadlines and indeed the elasticity of such deadlines has become strict and sacrosanct. This was the whole object of the Commercial Courts Act. The Statement of Objects and Reasons of the Commercial Courts Act itself highlights the necessity for speedy disposal of high value commercial disputes and early resolution. It was for this

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reason that provisions of CPC were amended as per Section 16 of the Commercial Courts Act and a detailed timeline was provided for filing of pleadings and documents. In this regard, the Hon'ble Supreme Court in ***Ambalal Sarabhai Enterprises Ltd. vs. K.S Infraspace LLP***, (2020) 15 SCC 585 made the following observation:

“36. A perusal of the Statement of Objects and Reasons of the Commercial Courts Act, 2015 and the various amendments to the Civil Procedure Code and insertion of new rules to the Code applicable to suits of commercial disputes show that it has been enacted for the purpose of providing an early disposal of high value commercial disputes. A purposive interpretation of the Statement of Objects and Reasons and various amendments to the Civil Procedure Code leaves no room for doubt that the provisions of the Act require to be strictly construed. If the provisions are given a liberal interpretation, the object behind constitution of Commercial Division of Courts viz. putting the matter on fast track and speedy resolution of commercial disputes, will be defeated. If we take a closer look at the Statement of Objects and Reasons, words such as “early” and “speedy” have been incorporated and reiterated. The object shall be fulfilled only if the provisions of the Act are interpreted in a narrow sense and not hampered by the usual procedural delays plaguing our traditional legal system.”

(emphasis supplied)

17. Order XI Rule 1(1) of CPC, as applicable to commercial suits, gives the first opportunity to a plaintiff to file documents on which they choose to rely upon at the time of filing of the suit. Such filing is done along with a declaration that all documents in the power, possession, control or custody of the plaintiff,

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pertaining to facts and circumstances of the proceedings initiated, have been disclosed and copies have been annexed with the plaint. Order XI Rule 1(3) CPC in fact further includes as part of the declaration that “*the plaintiff does not have any other documents in its power, possession, control or custody*”. Thereafter, Order XI Rule 1(5) CPC follows, which precludes the plaintiff from relying on documents which were in their power, possession, control or custody but not disclosed with the plaint, save and except with the leave of the Court. What is underscored here is that the provision necessitates that such leave by the Court shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint. Thus, the plaintiff has the option of disclosing documents which they choose to rely upon and if not disclosed, the same cannot be allowed unless reasonable cause is established.

18. In the facts of the matter, plaintiff itself contends that the plaint was filed on the claim of use of trademarks since 1955. This is evident, *inter alia*, from para 4 and 7 of the plaint. If that was so, plaintiff ought to have produced whatever document they could have gathered, from whatever source, to prove use since 1955. Had they done that, the plaintiff would have secured their case for use since 1955.

19. Defendant’s written statement claimed that they were using the word mark ‘PRESTIGE’ since 2005. In support of the same, they filed documents, *inter alia*, sale invoices, screen-shots from various e-commerce platforms and communications exchanged between defendants and the customers. Having had the benefit of the written statement and documents filed, it was natural for

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the plaintiff to establish their case by establishing prior use before 2005 at the very outset.

20. Nevertheless, plaintiff had an opportunity to file a replication, which they did on 07th September, 2021. Along with the said replication, plaintiff filed certain documents including certain correspondence and screen-shots related to e-commerce sites. At this stage itself, plaintiff should have been diligent and wise enough to file whatever documents they needed to support a prior user claim or even buttress the documents filed along with the plaint. However, they did not do so. They were obviously aware that the initial period for filing documents and the extended period was exhausted by that stage including the slim opportunity they had per Order XI Rule 1(c) (ii) CPC, in rebuttal of the case set-up by the defendants.

21. Further, as rightly pointed out by defendants' counsel, certified copies of the documents (as evident from the stamp on the documents sought to be additionally filed by the instant application) are dated 22nd February, 2023. Having received the documents of the prior suit from the Trial Court, it was imperative for the plaintiff to assert, on 27th February, 2023, when the defendants' application for additional documents was being heard by the Court, that they also wanted to file additional documents. Aside from the fact that there is no record of such assertion in the order dated 27th February, 2023, no attempt was made by the plaintiff for the next five months to move an appropriate application.

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22. This lack of diligence stares in the face of the plaintiff and the relief they seek through this application. Besides, plaintiff being a company of repute, having been in business for decades, should have been diligent about protecting their trademarks. It would not pass muster with this Court that they had to scramble for some documents for more than two years after the institution of this suit to prove use of their house mark PRESTIGE.

23. Plaintiff's claim that the instant application was necessitated in rebuttal of the defendants' documents filed in February, 2023, does not find favor with this Court. Strict deadlines of the Commercial Courts Act ought to hang like Damocles' sword over contesting parties, since that is what is intended by the modified provisions of the Code of Civil Procedure, 1908. A party intending to injunct a defendant from using a mark similar to theirs, cannot possibly be tardy or dilatory in marshalling their documents.

24. Moreover, no prejudice is caused to plaintiff since they had indeed filed three volumes of documents along with their plaint in support of their use of the trademark since 1955 as well as additional documents along with the replication in September, 2021. Plaintiff, therefore, is fairly secure in having to rely upon documents already filed in support of their plaint.

25. In any event, the issue is of compliance and deadlines and lack of "reasonable cause". Reliance, therefore, on decisions relied upon by the Single Judge of this Court in *Oriental Insurance Company (supra)* in para 70 on *Sudhir Kumar @S. Baliyan v. Vinay Kumar G.B*, 2021 SCC OnLine SC 734, in para 73 on *Bela Creation Private Limited v. Anuj Textiles*, 2022 SCC

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OnLine Del 1366, in para 74 on *Nitin Gupta v. Texmaco Infrastructure & Holding Ltd.*, 2019 SCC OnLine Del 8367, and in para 75 on *Rishi Raj v. Saregama India Ltd.*, 2021 SCC OnLine Del 4897 is apposite. For ease of reference, the relevant paragraphs are extracted below:

*“70. It is quite late in the day for the plaintiffs to file these documents on record. This being a commercial suit, timelines are to be strictly followed. The Supreme Court in **Sudhir Kumar @ S. Baliyan v. Vinay Kumar G.B** (supra), has in paragraphs 30 and 31 held as under:—*

“30. Order XI Rule 1(5) further provides that the plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non disclosure along with the plaint. Therefore on combined reading of Order XI Rule 1(4) read with Order XI Rule 1(5), it emerges that (i) in case of urgent filings the plaintiff may seek leave to rely on additional documents; (ii) within thirty days of filing of the suit; (iii) making out a reasonable cause for non disclosure along with plaint.

31. Therefore a further thirty days time is provided to the plaintiff to place on record or file such additional documents in court and a declaration on oath is required to be filed by the plaintiff as was required as per Order XI Rule 1(3) if for any reasonable cause for non disclosure along with the plaint, the documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint. Therefore plaintiff has to satisfy and establish a

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reasonable cause for non disclosure along with plaint. However, at the same time, the requirement of establishing the reasonable cause for non disclosure of the documents along with the plaint shall not be applicable if it is averred and it is the case of the plaintiff that those documents have been found subsequently and in fact were not in the plaintiff's power, possession, control or custody at the time when the plaint was filed. Therefore Order XI Rule 1(4) and Order XI Rule 1(5) applicable to the commercial suit shall be applicable only with respect to the documents which were in plaintiff's power, possession, control or custody and not disclosed along with plaint. Therefore, the rigour of establishing the reasonable cause in non disclosure along with plaint may not arise in the case where the additional documents sought to be produced/relied upon are discovered subsequent to the filing of the plaint.”

73. In *Bela Creation Pvt. Ltd. (supra)*, on which reliance placed by Mr. Sarvaria, this Court has held as under:—

“24. In the absence of any averment to the effect that the aforesaid declaration, contained in the Statement of Truth accompanying the written statement and counter-plaint filed by the petitioner, was incorrect, the learned Commercial Court was justified in holding that additional documents, which were in the custody of the petitioner at the time of filing the written statement, could not be permitted to be introduced at a later stage. “Reasonable cause”, within the meaning of Order XI Rule 1(10) of the CPC, as amended by the Commercial Courts Act, cannot extend to negligence in filing of documents before the Court. “Reasonable cause”, necessarily, must refer to a cause which was outside the control of the petitioner, and which prevented the

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petitioner from filing the concerned documents along with the written statement.”

(emphasis supplied)

74. In **Nitin Gupta** (supra), this Court has held as under:—

38. Unless, the Commercial Divisions, while dealing with the commercial suits, so start enforcing Rules legislated for commercial suits, and refuse to entertain applications for late filing of documents, especially with respect to documents of suspicious character and continue to show leniency in the name of ‘interest of justice’ and ‘a litigant ought not to suffer for default of advocate’, the commercial suits will start suffering from the same malady with which the ordinary suits have come to suffer and owing whereto the need for the Commercial Courts Act, 2015 was felt. Commercial Division is thus not required to entertain or allow applications for late filing of documents, without any good cause being established for non-disclosure thereof along with pleadings.

75. In **Rishi Raj** (supra), this Court has held as under:

[.....]

23. The suit was filed in 2017 and the application for filing additional documents had been filed three years later in 2020 merely stating inadvertent error. In my opinion, there is no reasonable cause given by the plaintiff for not filing the additional documents along with the plaint. The application is belated. The plaintiff cannot be permitted to rely on the documents as sought.”

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26. Plaintiff's counsel placed heavy reliance on the fact that this Court permitted the defendants' documents to come on record by order dated 27th February, 2023 and urged that the same facility be given to the plaintiff. Notwithstanding the reasons which persuaded the Court to allow defendants' documents on 27th February, 2023, it cannot give a *carte blanche* to the plaintiff to introduce documents at a belated stage, particularly in light of the circumstances and chronology of events adverted to above.

27. Even if deadlines as per Order XI Rule 1 CPC are stretched to the maximum, plaintiff had multiple opportunities to file relevant documents, first along with the suit, in the extended period, then with their replication, and possibly when defendants' application for additional documents was being allowed, or, at the very most, immediately thereafter. Equity claimed by the plaintiff cannot be countenanced in the abstract and in complete by-pass of statutory provisions. This contention, therefore, by the plaintiff's counsel is unmerited.

28. Therefore, in the opinion of this Court, the instant application filed by the plaintiff under Order XI Rule 1(5) CPC for placing additional documents on record cannot be allowed and is, therefore, dismissed.

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29. List before the Joint Registrar for further proceedings on 15th February, 2024.

30. Order be uploaded on the website of this Court.

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**(ANISH DAYAL)
JUDGE**

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