

SUDHIR KUMAR @ S. BALIYAN

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v.

VINAY KUMAR G.B.

(Civil Appeal No. 5620 of 2021)

SEPTEMBER 15, 2021

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[M. R. SHAH AND ANIRUDDHA BOSE, JJ.]

Code of Civil Procedure, 1908 –Or.VII, r.14(3) and Or. XI, R.1 (as amended by the amendment in the Commercial Courts Act) – Filing of additional documents –The appellant-original plaintiff filed the commercial suit claiming a decree of permanent injunction against the defendant from using the Trade Mark of appellant – Appellant filed an application u/Or.VII, r.14(3) and sought to file additional documents – The said application was dismissed by the Commercial Court –The High Court confirmed the order by the Commercial Courts – On appeal, held: Or. XI, R.1 as amended by the amendment in the Commercial Courts Act, with respect to the suits before the commercial division and the Commercial Court, the provisions of Or.VII, R.14 (3) were not applicable – Therefore, as such the plaintiff applied the wrong provision seeking leave of the court to place on record the additional documents – Now, before the Supreme Court, the application submitted by the appellant was considered submitted u/Or. XI R.1(4) of the CPC as both the Commercial Court and the High Court had considered and applied Or.XI, R.1 –In the said application for additional documents, it was specifically mentioned that so far as the invoices are concerned, the same were not in its possession at the time of the filing of the complaint and so far as the other documents are concerned they were not filed due to they being voluminous – Therefore, so far as the invoices sought to be relied on/produced as additional documents ought to have been permitted – Insofar as, the non-filing of the additional documents other than the invoices on the ground of they being voluminous cannot be said to be a reasonable cause for non-disclosure/filing along with complaint – Both the courts below rightly not permitted the plaintiff to rely upon the documents, other than the invoices as additional documents in exercise of the powers u/Or. XI R.1 (4) r/w. Or. XI R. 1 (5).

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A **Partly allowing the appeal, the Court**

HELD: 1. It emerges from the record that the first suit was filed by the plaintiff in the month of October, 2018, bearing TM No.236 of 2018, restraining the defendant from infringing and passing-off plaintiff's Trade Marks. That an ex-parte interim injunction was passed in favour of the plaintiff by order dated 29.10.2018. It appears having realized and found that the earlier suit was not in consonance with the provisions of the Commercial Courts Act, the plaintiff withdrew the said suit being TM No.236 of 2018 on 27.07.2019 with liberty to file a fresh suit as per the Commercial Courts Act, 2015. Therefore, the second suit was filed on 31.08.2019 and within a period of thirty days from filing of the second suit the appellant herein – original plaintiff preferred the present application seeking leave of the court to file additional documents. In the application, it was specifically mentioned that so far as the invoices are concerned, the same were not in its possession at the time of the filing of the plaint and so far as the other documents are concerned they were not filed due to they being voluminous. Therefore, so far as the invoices sought to be relied on/produced as additional documents ought to have been permitted to be relied on/produced as it was specifically asserted that they were not in his possession at the time of filing of the plaint/suit.[Para 8.1][747-A-E]

2. Now, so far as the other documents sought to be relied on/produced as additional documents other than the invoices are concerned the same stands on different footing. It is not disputed and in fact it was specifically admitted and so stated in the application that those additional documents other than the invoices were in their possession but not produced being voluminous and that the suit was filed urgently. However, it is to be noted that when the second suit was filed, it cannot be said to be urgent filing of the suit for injunction, as the first suit was filed in the month of October, 2018 and there was an ex-parte ad interim injunction vide order dated 29.10.2018 and thereafter plaintiff withdrew the said first suit on 27.07.2019 with liberty to file a fresh suit as per the Commercial Courts Act and the second suit came to be filed on 31.08.2019 after period of one month of the withdrawal of first suit. Therefore the case on behalf of the plaintiff

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that when the second suit was filed, it was urgently filed therefore, the additional documents sought to be relied upon other than the invoices were not filed as the same were voluminous cannot be accepted. And therefore as such Order XI Rule 1 (4) shall not be applicable, though the application was filed within thirty days of filing of the second suit. While seeking leave of the court to rely on documents, which were in his power, possession, control or custody and not disclosed along with plaint or within the extended period set out in Order XI Rule 1 (4), the plaintiff has to establish the reasonable cause for non disclosure along with plaint. [Para 8.4][748-B-G]

3. In view of the facts and circumstances and in view of the filing of the first suit in the month of October, 2018; the ex-parte ad interim injunction order in favour of the plaintiff dated 29.10.2018; withdrawal of the first suit on 27.07.2019 and subsequently the filing of the second suit on 31.08.2019, non filing of the additional documents other than the invoices on the ground of they being voluminous cannot be said to be a reasonable cause for non disclosure/filing alongwith plaint. There was sufficient time gap between the filing of the first suit and filing of the second suit i.e. approximately 10 months and therefore when the second suit was filed the plaintiff was having sufficient time after filing of the first suit, to file the additional documents other than the invoices at the time when the second suit was filed. Therefore, as such, both the courts below have rightly not permitted the plaintiff to rely upon the documents, other than the invoices as additional documents in exercise of the powers under Order XI Rule 1 (4) read with Order XI Rule 1 (5). [Para 8.5][748-G-H; 749-A-C]

CIVIL APPELLATE JURISDICTION: Civil Appeal No.5620 of 2021.

From the Judgment and Order dated 06.04.2021 of the High Court of Delhi at New Delhi in C.M. (M) 181 of 2021.

Sachin Datta, Sr. Adv., Jayant Kumar, Amit Mehta, Ms. Athira G. Nair for M/s LAWFIC, Advs. for the Appellant.

Ms. Kruttika Vijay, Aditya Verma, Advs. for the Respondent.

A The Judgment of the Court was delivered by

M. R. SHAH, J.

B 1. Feeling aggrieved and dissatisfied with the impugned judgment
and order dated 06.04.2021 passed by the High Court of Delhi at New
Delhi in C. M. (M) No.181 of 2021, by which the High Court has dismissed
the said petition preferred by the appellant herein – original plaintiff and
has confirmed the order dated 13.11.2019 passed by the learned
Commercial Court, dismissing the application filed by the appellant under
Order VII Rule 14 (3) of the Code of Civil Procedure (hereinafter
referred to as the Code) seeking leave of the court to place additional
C documents on record, the original plaintiff has preferred the present
appeal.

D 2. The appellant herein – original plaintiff filed the commercial
suit before the Commercial Court pending in the court of learned
Additional District Judge (Central) 10, being T.M. No.123 of 2019
inter alia for claiming a decree of permanent injunction against the
defendant from using the Trade Mark “INSIGHT”, “INSIGHT
ACADEMY”, “INSIGHT IAS ACADEMY” and “INSIGHT
PUBLICATIONS”. At this stage, it is to be noted that the appellant filed
the earlier suit being Trade Mark Suit No.236 of 2018, claiming such
adoption and use of the trademark. However, subsequently the same
E came to be withdrawn on 27.07.2019, as the same was not filed in
conformity with the provisions of the Commercial Courts Act, 2015
(hereinafter referred to as the Commercial Courts Act) and subsequently
filed the present suit on 31.08.2019. In the suit it is alleged that the
adoption and use of the trademark by it is since 2006. As per the provisions
F of Order XI Rule 1 applicable to the suits before the commercial division
of a High Court or a commercial court, the plaintiff was required to file
a list of all documents and photocopies of all documents, in its power,
possession, control or custody, pertaining to the suit, along with the plaint
or certain documents including the invoices, were not produced along
with the plaint and therefore the appellant herein filed the application
G under Order VII Rule 14 (3) read with Section 151 of CPC, seeking
leave of the court to file additional documents.

2.1 By order dated 13.11.2019, the learned Commercial Court
dismissed the said application seeking leave of the court to
file additional documents, filed by the appellant. That
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thereafter the defendant filed the written statement on 06.01.2020. As per Order XI Rule 7 even the defendant was required to file the list of all documents, photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the written statement or with its counter claim, if any. However, some documents were not produced by the defendant along with the written statement and therefore the defendant filed an application under Order XI Rule 1 (10) of the CPC seeking leave of the court to produce additional documents as set out in the said application, however, the commercial court partly rejected the said application vide order dated 08.10.2020.

The respondent herein – original defendant preferred an appeal against the order dated 08.10.2020 before the Delhi High Court. The Delhi High Court vide order dated 07.12.2020 allowed the said appeal taking on record all the documents filed by the defendant. That thereafter the learned Commercial Court dismissed the interim injunction application filed under Order XXXIX Rule 1 and 2 of the CPC of the plaintiff vide order dated 16.01.2021.

2.2 That thereafter the appellant herein – original plaintiff filed CM (M) No.181 of 2021 before the High Court of Delhi challenging the order dated 13.11.2019, dismissing the application seeking leave of the court to file additional documents filed by the plaintiff. By the impugned judgment and order, the High Court has dismissed the said CM (M) No. 181 of 2021 and has confirmed the order passed by the learned Commercial Court dismissing the application seeking leave to file additional documents filed by the plaintiff.

3. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the original plaintiff has preferred the present appeal.

4. Shri Sachin Datta, learned Senior Advocate appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case, the application submitted by the plaintiff to file/produce on record the additional documents, as mentioned in the application submitted under Order XIV Rule 3 ought to have been allowed.

- A 4.1 It is vehemently submitted that as such the documents which are sought to be relied upon and sought to be produced on record are very much necessary for the purpose of just decision of the suit.
- B 4.2 It is submitted that when the defendant was permitted to produce on record the additional documents along with the written statement in exercise of powers under Order XI Rule 1 (10) of the CPC, similarly the plaintiff also ought to have been permitted to place on record the additional documents which as such are very much necessary for just decision of the suit.
- C 4.3 It is further submitted that by Shri Datta, learned Senior Advocate appearing on behalf of the appellant that the High Court ought to have appreciated the application to file additional documents was filed by the plaintiff within 10 days of filing of the suit. It is submitted that as such therefore the High Court has erred in holding that the additional documents were produced by the plaintiff at a belated stage. It is further submitted that the High Court has also materially erred in observing that the explanation for non-filing of additional documents is an afterthought and when the application for interim injunction under Order XXXIX Rule 1 was kept for orders.
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- E 4.4 It is submitted that the High Court has at all not appreciated the fact that the application seeking leave of the court to produce the additional documents was filed within 30 days of filing of the suit and therefore the requirement under Order XI Rule 1 (4) of the CPC was satisfied.
- F 4.5 It is further submitted that even the High Court has erred in not appreciating that the additional documents are in support of the pleadings already made in the plaint.
- G 4.6 It is further submitted that even the High Court has erred in not appreciating that the learned Trial Court/Commercial Court erred in holding that the documents are suspicious because the plaintiff did not mention about the existence of the said documents in the plaint. It is submitted that at the stage of production of the additional documents, the learned
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Trial Court/Commercial Court was not at all required to consider the genuineness of the documents sought to be produced, which otherwise are required to be decided or considered during the trial of the suit. A

4.7 It is further submitted that even otherwise so far as the invoices, which are sought to be produced, are concerned, it was specifically stated that the said documents were not available or in possession of the plaintiff at the time when the suit was filed and the same were discovered subsequently. B

4.8 It is further submitted by the counsel appearing on behalf of the appellant that cogent reasons were given by the plaintiff for not producing the additional documents other than the invoices, along with the suit. It is submitted that as such there was no other malafide intention and/or negligence on the part of the plaintiff for not producing along with the plaint the additional documents other than the invoices. It is submitted that the suit was filed on an urgent basis seeking an ex-parte ad interim injunction and therefore the additional documents other than the invoices, which were bulky were not produced along with the plaint. It is submitted that therefore when the application for leave to produce the additional documents was filed within a period of 10 days from the date of filing of the suit i.e. without any undue delay, the said application ought to have been allowed and the plaintiff ought to have been permitted to produce the additional documents as mentioned in the application. C
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5. The present appeal is vehemently opposed by Ms. Kruttika Vijay, learned Advocate appearing on behalf of the respondent herein – original defendant. F

5.1 It is submitted that in the facts and circumstances of the case and considering the object and purpose of Order XI Rule 1 as applicable to the suits before the commercial court and considering the said provisions, both the learned Trial Court/Commercial Court as well as the High Court have rightly dismissed the application filed by the plaintiff under Order VII Rule 14 (3) of the CPC. G

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- A 5.2 It is submitted that as such no cogent reasons were given by the plaintiff for not producing additional documents along with the plaint. It is submitted that in the absence of any cogent reasons, the application submitted by the plaintiff for seeking leave of the court to produce the additional documents is rightly dismissed. It is submitted that the order rejecting the application of the plaintiff seeking leave of the court to produce on record the additional documents is absolutely in consonance with the provisions of the Order XI Rule 1 (4) and Order XI Rule 1 (5) of the CPC.
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- C 5.3 It is further submitted by the learned counsel appearing on behalf of the respondent herein—original defendant that in view of the specific provision by way of amendment in the CPC, amending Order XI Rule 1 of the CPC w.r.t. the suits before the commercial court, considering Section 16 of the Commercial Courts Act, Order VII Rule 14(3) shall not be applicable at all and what shall be applicable would be Order XI Rule 1 of the CPC as applicable to the suits before the commercial court.
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- E 5.4 It is further submitted that as such the application submitted by the plaintiff lacked bonafides as having realized during the course of the hearing of the interim injunction application under Order XXXIX Rule 1 that non production of the documents which subsequently are sought to be produced may come in their way and the interim injunction application was kept for orders and as an afterthought the application was given. It is further submitted by the learned counsel appearing on behalf of the respondent herein - original defendant that so far as the cause/reason shown in not producing the additional documents other than the invoices, namely, as the documents were bulky and therefore they were not produced, cannot be a ground, subsequently to permit the plaintiff to place on record the additional documents which as such were in possession of the plaintiff at the time of filing of the plaint/suit.
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6. Making the above submissions, it is prayed to dismiss the present appeal.

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7. We have heard the learned counsel appearing on behalf of the respective parties at length. A

7.1 By the impugned judgment and order, the High Court has dismissed the petition confirming the order passed by the learned Commercial Court dated 13.11.2019, dismissing the application filed by the appellant herein – original plaintiff seeking leave of the court to place additional documents on record. That by the said application the plaintiff prayed to permit him to place on record the invoices as mentioned in paragraph 3 of the application and also certain other additional documents. That the plaintiff stated in the application for leave to place on record additional documents in paragraph 3 and 4 as under:- B C

“3. That the accompanying documents along with the present application in particular invoice dated 03.05.2005, invoice dated 08.07.2005, invoice dated 10.08.2005, invoice dated 22.02.2006, invoice dated 10.04.2006, Invoice dated 05.06.2006, invoice dated 15.07.2006, invoice dated 10.01.2007, invoice dated 14.03.2007, invoice dated 19.05.2007, invoice dated 08.07.2007, invoice dated 06.09.2007, invoice dated 14.03.2007, invoice dated 01.10.2007 could not be filed along with plaint being very old and not in possession of the plaintiff at the time of filing the plaint. Now the plaintiff has found the same from the Shivalik Graphics. D E

4. That the documents other than above said documents could not be filed due to voluminous records pertaining to plaintiff case could not be filed at the time of filing of case but the same are very important for the adjudication of dispute between the parties.” F

The aforesaid application has been dismissed by the learned Commercial Court, which has been confirmed by the High Court by the impugned judgment and order.

7.2 At the outset, it is required to be noted that as such the said application for leave to produce on record additional documents was preferred by the appellant herein – original plaintiff under Order VII Rule 14 (3) of the CPC. However, considering the Order XI Rule 1 as applicable to the commercial suits by which Civil Procedure Code has been amended with respect to the suits before the commercial H

- A court and in view of the Section 16 of the Commercial Courts Act, Order VII Rule 14 (3) of the CPC shall have no application at all. After the Order XI Rule 1 has been amended with respect to the suits before the commercial courts and a specific provision/procedure has been prescribed with respect to the suits before the commercial division and before the commercial court, the provision of the Code of Civil Procedure as has been amended by the Commercial Courts Act, 2015 shall have to be followed and any provision of any rule of the jurisdiction of the High Court or any amendment to the Code of Civil Procedure by the State Government which is in conflict of the Code of the Civil Procedure as amended by Commercial Courts Act, the provision of the Code of the Civil Procedure as amended by the Commercial Courts Act shall prevail. Therefore, Order XI Rule 1 as amended by the amendment in the Commercial Courts Act, with respect to the suits before the commercial division and the commercial court, the provisions of Order VII Rule 14 (3) shall not be applicable at all. Therefore as such the plaintiff applied the wrong provision seeking leave of the court to place on record the additional documents. However, considering the fact that thereafter, both the learned Commercial Court as well as the High Court treated and considered and even applied Order XI Rule 1 of the CPC as amended by the Commercial Courts Act and as applicable to the suits filed before the commercial division, commercial court, we proceed to consider the application submitted by the appellant herein – original plaintiff, as if the same was submitted under Order XI Rule 1 (4) of the CPC.
- 7.3 It is true that Order XI Rule 1 of the CPC as applicable to the commercial suits brought about a radical change and it mandates the plaintiff to file a list of all documents, photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint and a procedure provided under Order XI Rule 1 is required to be followed by the plaintiff and the defendant, when the suit is the commercial suit. Order XI Rule 1, as applicable to commercial suits reads as under:-

ORDER XI DISCLOSURE, DISCOVERY AND INSPECTION OF DOCUMENTS IN SUITS BEFORE THE COMMERCIAL DIVISION OF A HIGH COURT OR A COMMERCIAL COURT

1. Disclosure and discovery of documents.—(1) Plaintiff shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint, including:—

(a) documents referred to and relied on by the plaintiff in the plaint;

(b) documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the plaint, irrespective of whether the same is in support of or adverse to the plaintiff's case;

(c) nothing in this Rule shall apply to documents produced by plaintiffs and relevant only—

(i) for the cross-examination of the defendant's witnesses, or

(ii) in answer to any case set up by the defendant subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.

(2) The list of documents filed with the plaint shall specify whether the documents in the power, possession, control or custody of the plaintiff are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document, mode of execution, issuance or receipt and line of custody of each document.

(3) The plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody.

Explanation.—A declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix.

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- A (4) In case of urgent filings, the plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath and subject to grant of such leave by Court, the plaintiff shall file such additional documents in Court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced
- B all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession, control or custody.
- C (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.
- D (6) The plaint shall set out details of documents, which the plaintiff believes to be in the power, possession, control or custody of the defendant and which the plaintiff wishes to rely upon and seek leave for production thereof by the said defendant.
- E (7) The defendant shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the written statement or with its counterclaim if any, including—
- (a) the documents referred to and relied on by the defendant in the written statement;
- F (b) the documents relating to any matter in question in the proceeding in the power, possession, control or custody of the defendant, irrespective of whether the same is in support of or adverse to the defendant's defence;
- (c) nothing in this Rule shall apply to documents produced by the
- G defendants and relevant only—
- (i) for the cross-examination of the plaintiff's witnesses,
- (ii) in answer to any case set up by the plaintiff subsequent to the filing of the plaint, or
- H (iii) handed over to a witness merely to refresh his memory.

(8) The list of documents filed with the written statement or counterclaim shall specify whether the documents, in the power, possession, control or custody of the defendant, are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document being produced by the defendant, mode of execution, issuance or receipt and line of custody of each document.

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(9) The written statement or counterclaim shall contain a declaration on oath made by the deponent that all documents in the power, possession, control or custody of the defendant, save and except for those set out in sub-rule (7) (c) (iii) pertaining to the facts and circumstances of the proceedings initiated by the plaintiff or in the counterclaim, have been disclosed and copies thereof annexed with the written statement or counterclaim and that the defendant does not have in its power, possession, control or custody, any other documents.

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(10) Save and except for sub-rule (7) (c) (iii), defendant shall not be allowed to rely on documents, which were in the defendant's power, possession, control or custody and not disclosed along with the written statement or counterclaim, save and except by leave of Court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or counterclaim.

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(11) The written statement or counterclaim shall set out details of documents in the power, possession, control or custody of the plaintiff, which the defendant wishes to rely upon and which have not been disclosed with the plaint, and call upon the plaintiff to produce the same.

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(12) Duty to disclose documents, which have come to the notice of a party, shall continue till disposal of the suit.

Order XI Rule 1 (3) provides that the plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceeding initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have other documents in its power, possession, control or custody. As per the explanation under Order 11 Rule 1 (3) a declaration on oath

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- A under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix. Appendix I with respect to the statement of truth reads as under:-

“APPENDIX-I

STATEMENT OF TRUTH

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(Under First Schedule, Order VI-Rule 15A and Order XI- Rule 3)

I —— the deponent do hereby solemnly affirm and declare as under:

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1. I am the party in the above suit and competent to swear this affidavit.

2. I am sufficiently conversant with the facts of the case and have also examined all relevant documents and records in relation thereto.

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3. I say that the statements made in —— paragraphs are true to my knowledge and statements made in —— paragraphs are based on information received which I believe to be correct and statements made in —— paragraphs are based on legal advice.

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4. I say that there is no false statement or concealment of any material fact, document or record and I have included information that is according to me, relevant for the present suit.

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5. I say that all documents in my power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by me have been disclosed and copies thereof annexed with the plaint, and that I do not have any other documents in my power, possession, control or custody. 6. I say that the above-mentioned pleading comprises of a total of —— pages, each of which has been duly signed by me.

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7. I state that the Annexures hereto are true copies of the documents referred to and relied upon by me.

8. I say that I am aware that for any false statement or concealment, I shall be liable for action taken against me under the law for the time being in force.

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Place: A

Date:

DEPONENT

VERIFICATION

I, do hereby declare that the statements B
made above are true to my knowledge.

Verified at [place] on this [date]

DEPONENT.”.]

Therefore, the declaration on oath shall be part of the plaint. The C
plaintiff has to declare on oath that all documents in its/his power,
possession, control or custody, pertaining to the facts and circumstances
of the proceedings, initiated by him/it have been disclosed and the copies
thereof annexed with the plaint, and that he does not have any other
documents in his power, possession, control or custody. Therefore as D
such it is mandated by Order XI Rule 1 for the plaintiff to disclose and
produce all the documents in his power, possession, control or custody,
pertaining to the facts and circumstances of the proceedings.

7.4 However, the additional documents can be permitted to be
bought on record with the leave of the court as provided in E
Order XI Rule 1 (4). Order XI Rule 1 (4) provides that in
case of urgent filings, the plaintiff may seek leave to rely
on additional documents as part of the above declaration
on oath [as provided under Order 11 Rule 1 (3)] and subject
to grant of such leave by Court, the plaintiff shall file such
additional documents in Court, within thirty days of filing F
the suit, along with a declaration on oath that the plaintiff
has produced all documents in its power, possession, control
or custody, pertaining to the facts and circumstances of the
proceedings initiated by the plaintiff and that the plaintiff
does not have any other documents, in its power, possession, G
control or custody.

7.5 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 H

A 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
B 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.

7.6 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
C 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
D plaint. Therefore plaintiff has to satisfy and establish a 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
E 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
F 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
G subsequent to the filing of the plaint.

8. Having considered the statutory provisions in detail, the order passed by the learned Commercial Court, confirmed by the High Court, rejecting the application of the plaintiff for leave to rely on the additional documents is required to be tested and considered.

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- 8.1 It emerges from the record that the first suit was filed by the plaintiff in the month of October, 2018, bearing TM No.236 of 2018, restraining the defendant from infringing and passing-off plaintiff's Trade Marks. That an ex-parte interim injunction was passed in favour of the plaintiff by order dated 29.10.2018. It appears having realized and found that the earlier suit was not in consonance with the provisions of the Commercial Courts Act, the plaintiff withdrew the said suit being TM No.236 of 2018 on 27.07.2019 with liberty to file a fresh suit as per the Commercial Courts Act, 2015. Therefore, the second suit was filed on 31.08.2019 and within a period of thirty days from filing of the second suit the appellant herein – original plaintiff preferred the present application seeking leave of the court to file additional documents. In the application, it was specifically mentioned that so far as the invoices are concerned, the same were not in its possession at the time of the filing of the plaint and so far as the other documents are concerned they were not filed due to they being voluminous. Therefore, so far as the invoices sought to be relied on/produced as additional documents ought to have been permitted to be relied on/produced as it was specifically asserted that they were not in his possession at the time of filing of the plaint/suit.
- 8.2 The submissions on behalf of the defendant that the cause shown for non production was an afterthought cannot be accepted for the simple reason that the application was filed within a period of thirty days from the date of filing of the second suit and at the time when the application for interim injunction under Order XXXIX Rule 1 was not fully heard and kept for orders.
- 8.3 Even the reason given by the learned Commercial Court that the invoices being suspicious and therefore not granting leave to produce the said invoices cannot be accepted. At the stage of granting leave to place on record additional documents the court is not required to consider the genuineness of the documents/additional documents, the stage at which genuineness of the documents to be considered during the trial and/or even at the stage of

- A deciding the application under Order XXXIX Rule 1 that too while considering prima facie case. Therefore, the learned Commercial Court ought to have granted leave to the plaintiff to rely on/produce the invoices as mentioned in the application as additional documents.
- B 8.4 Now, so far as the other documents sought to be relied on/produced as additional documents other than the invoices are concerned the same stands on different footing. It is not disputed and in fact it was specifically admitted and so stated in the application that those additional documents other than the invoices were in their possession but not produced being voluminous and that the suit was filed urgently. However, it is to be noted that when the second suit was filed, it cannot be said to be urgent filing of the suit for injunction, as the first suit was filed in the month of October, 2018 and there was an ex-parte ad interim injunction vide order dated 29.10.2018 and thereafter plaintiff withdrew the said first suit on 27.07.2019 with liberty to file a fresh suit as per the Commercial Courts Act and the second suit came to be filed on 31.08.2019 after period of one month of the withdrawal of first suit. Therefore the case on behalf of the plaintiff that when the second suit was filed, it was urgently filed therefore, the additional documents sought to be relied upon other than the invoices were not filed as the same were voluminous cannot be accepted. And therefore as such Order XI Rule 1 (4) shall not be applicable, though the application was filed within thirty days of filing of the second suit. While seeking leave of the court to rely on documents, which were in his power, possession, control or custody and not disclosed along with plaint or within the extended period set out in Order XI Rule 1 (4), the plaintiff has to establish the reasonable cause for non disclosure along with plaint.
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- G 8.5 In view of the facts and circumstances narrated hereinabove and in view of the filing of the first suit in the month of October, 2018; the ex-parte ad interim injunction order in favour of the plaintiff dated 29.10.2018; withdrawal of the first suit on 27.07.2019 and subsequently the filing of
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the second suit on 31.08.2019, non filing of the additional documents other than the invoices on the ground of they being voluminous cannot be said to be a reasonable cause for non disclosure/filing along with plaint. There was sufficient time gap between the filing of the first suit and filing of the second suit i.e. approximately 10 months and therefore when the second suit was filed the plaintiff was having sufficient time after filing of the first suit, to file the additional documents other than the invoices at the time when the second suit was filed. Therefore as such, both the courts below have rightly not permitted the plaintiff to rely upon the documents, other than the invoices as additional documents in exercise of the powers under Order XI Rule 1 (4) read with Order XI Rule 1 (5).

9. In view of the above and for the reasons stated above, the plaintiff can be permitted to rely on the documents in the form of invoices as mentioned in the application as additional documents. However, such production shall not affect the outcome of interim injunction application submitted under Order XXXIX Rule 1 of the CPC, which as such is reported to be kept for orders.

10. In view of the above and for the reasons stated above, the present appeal is partly allowed. The impugned judgment and order passed by the High Court confirming the order passed by the learned Commercial Court dismissing the application submitted by the plaintiff to rely on/produce the documents mentioned in application dated 13.09.2019, as additional documents is quashed and set aside to the extent not granting leave to the appellant herein – original plaintiff to rely on/produce the invoices mentioned in the application dated 13.09.2019 and consequently the leave is granted to the appellant herein – original plaintiff to produce/rely on the invoices mentioned in the application as additional documents. Rest of the order not granting leave to appellant herein – original plaintiff to rely on/produce the documents other than the invoices as observed hereinabove, as additional evidence is hereby confirmed. The present appeal is accordingly partly allowed to the aforesaid extent. No costs.