

# Natures Essence Private Limited vs Protogreen Retail Solutions Private ... on 22 February, 2021

**Author: C.Hari Shankar**

**Bench: C.Hari Shankar**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ CS(COMM) 581/2020, I.A. 12750/2020 & I.A. 2748/2021  
NATURES ESSENCE PRIVATE LIMITED

Through: Mr. Chander M. Lall, Sr.  
Mr. Sanjay Aggarwal, Ms.  
& Ms. Palak Arora

versus

PROTOGREEN RETAIL SOLUTIONS PRIVATE LIMITED &  
ORS. .... Defendants

Through: Mr. Sumit R. Sharma, Mr. Aakarshan  
Aditya, Mr. Gaurav Dhawaj, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR  
ORDER

% 22.02.2021 I.A. 12750/2020 (under Order XXXIX, Rules 1 & 2, read with Section 151 of CPC, 1908)

1. Mr. Chander Lall, learned senior counsel for the plaintiff, has concluded his submissions, and the submissions of Mr. Sharma, learned counsel for the defendant, are in progress.

2. Mr. Sharma submits that he has filed as many as 638 pages of additional documents, along with I.A. 2748/2021, under Order XI Rule 1(10) of the Code of Civil Procedure, 1908 (CPC), to take the said documents on record.

3. He submits that he would desire to refer to the said documents while refuting the submissions advanced by Mr. Lall.

4. Mr. Lall has seriously questioned the merits of the application of the defendant under Order XI Rule 1(10) of the CPC, and has also submitted that the defendants cannot be permitted to rely on the said documents while contesting the application of his clients under Order XXXIX, CPC. He has invited my attention, in this context, to para 5 of the written statement filed by the defendants, in response to the plaint, which reads thus;

5. The Defendants mark has been continuously, extensively and uninterruptedly been used since 2015. The Plaintiff has deliberately and mala fide claimed that it has gained knowledge about the Defendant's products/mark only in November 2020. The present suit having been filed after an inordinate delay of nearly 6 years, the same is barred by delay, laches & acquiescence. The plaintiff does not merit any equitable relief much less a restraint order against the Defendants. The present suit is thus liable to be dismissed summarily under Order VII Rule 11 of the CPC. The Defendants business over the years has increased progressively and steadily which is clear from the annual sales figures as below:

Protogreen Retail Solutions Pvt Ltd Year Sales (in INR) Status 2014-15 3,66,644.00 Audited 2015-16 8,75,220.00 Audited 2016-17 28,52,891.00 Audited 2017-18 59,94,128.00 Audited 2018-19 89,43,185.00 Audited 2019-20 Un-audited 2,02,06,289.00 Mekasa Products Pvt Ltd Year Sales (in INR) Status 2018-19 38,01,721.00 Audited 2019-20 1,78,75,292.00 Audited Signing Date:24.02.2021 21:47:17

5. In juxtaposition with the aforesaid paragraph, Mr. Lall also relies on para 5 of the affidavit, accompanying the statement of truth filed with the written statement which reads as under;

"I say that all documents in my power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated against Defendants No. 1 and 2 have been disclosed and the copies of the same have been filed along with the written statement and that I do not have any other other document in my power, possession, control or custody which to my knowledge are relevant to the present suit."

6. Mr. Lall submits that there is a clear and categorical assertion, by the deponent to the affidavit accompanying the statement of truth filed with the written statement, Mr. Mehendru that all documents in his power, possession, control and custody, pertaining to the facts and circumstances of the present proceedings have been disclosed and copies thereof filed with the written statement. It is further asserted, in the very same breath, that he had no other document in his power, possession, control or custody which to his knowledge, were relevant to the present suit.

7. Mr. Lall submits that, in view of this clear assertion, the documents filed with the present application are obviously fabricated and created after the plaintiff had commenced its arguments, merely to contest the application of the plaintiffs. He specifically draws attention in this context to Para 3 of I.A. 2748/2021, which reads as under;

"3. The Defendants however filed all documents which were relevant for the matter and readily available within their power and possession. More specifically the Defendants filed invoices to establish and substantiate their continuous use of the mark 'Nature's Tattva' since the year 2015."

8. Mr. Lall submits that the tenor of Para 3 of I.A. 2748/2021 is in stark contradiction to Para 5 of the affidavit accompanying the statement of truth filed with the written statement of the defendants. While, in the affidavit, the defendants clearly stated that they had filed all documents which were in their power, possession, control and custody and they had no other documents which were relevant, they now chose to aver that, with the written statement, they had filed only the documents which were relevant with the matter and readily available within their power and possession. This, according to Mr Lall, was only with a view to ensuring that the additional documents could be brought on record, so that fabricated documents could, mischievously, be sought to be relied upon. Such a practice, he submits, if allowed, would completely defeat the very purpose of the Commercial Courts Act, 2015, which requires all relevant documents to be filed with the written statement.

9. Mr. Lall submits that such attempts to introduce new documents, when the earlier documents are shown to be forged should not be permitted at all.

10. Two issues arise, therefore, (i) whether the additional documents, filed with I.A. 2748/2021, ought to be permitted to be brought on record, and (ii) whether the defendants ought to be permitted to rely on the said documents to contest the plaintiffs application under Order XXXIX, CPC.

11. I specifically put a query to Mr. Sharma, learned counsel for the defendant, as to how, in response to the application of the plaintiff under face of Para 5 of the affidavit accompanying the statement of truth filed with the written statement.

12. Prima facie, in my view, irrespective of the issue of whether these documents ought to be permitted to be brought on record at all, the defendants cannot be permitted to rely on such documents, to contest the plaintiff's application under Order XXXIX.

13. Besides, the documents themselves are not on record, though they have been filed vide Diary No. 245016 and the office report on the website of this court does not disclose that they are under objection. The Registry is directed to bring the aforesaid documents on record during the course of the day.

14. Re-notify as part-heard tomorrow, i.e. 23rd February, 2021.

15. Mr. Sharma would be required, before relying on the aforesaid 638 pages of documents filed by him, to satisfy the court, in view of the above observations, as to why he should be permitted to rely on the said documents, while contesting the plaintiff's application under Order XXXIX.

C.HARI SHANKAR, J FEBRUARY 22, 2021 ss