

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

% *Reserved on: 17.12.2021*

Pronounced on: 03.01.2022

+ CS(COMM) 247/2019

JINDAL STAINLESS (HISAR) LTD. Plaintiff

Through: Mr.Saif Khan & Mr.Achuttam
Shreekumar, Advocates

Versus

SOURABH JINAL & ORS. Defendants

Through: Ms.Roopaa Dayal & Mr.Birender
Bhatt, Advocates for Defendants
No.1 & 3.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

I.A. No. 3510/2021 (under Order VIII Rule 1 (3) CPC)

1. The captioned suit has been filed by the plaintiff seeking permanent injunction, restraining infringement of trademark "JINDAL", passing-off, dilution and tarnishment of the trademark; damages; rendition of accounts; delivery up; declaration of 'well-known' status etc.

2. The present application has been preferred by applicant/defendant No.1- Sourabh Jindal to bring on record certain additional documents. The reasons for filing this application have been enumerated in Para-4 of this application, which read as under:-

“4. During Pendency of the suit and after filing of the written

statement and the documents, following developments have taken place:-

- (i) Defendant No. 1 has got registration of the trademark “Sourabh Jindal” with logo in class 16 and 35.
- (ii) Mr. Dheeraj Aggarwal and Mr. Praful B. Bhatt joined the business with defendant No.1 and have created a Limited Liability Partnership company in the name of Sourabh Jindal LLP from 14th August, 2020. Now the business of Defendant No.1 is being run by three of the Partners In the name of limited liability Partnership company called SOURABH JINDAL LLP with all its assets and liabilities from 14th August, 2020. The plaintiff is free to take appropriate steps to substitute Sourabh Jindal LLP as a Defendant in the said suit as per law.
- (iii) Defendant No 1 has also executed an assignment deed (of trademark Sourabh Jindal with logo)in favour of Sourabh Jindal LLP and filed an appropriate application TM-P before the concerned authority in this regard.

3. At the hearing, learned counsel for applicant/defendant No.1 submitted that the documents sought to be placed on record are in public domain and are necessary for just determination of the case.

4. On the other hand, the present application was vehemently opposed by learned counsel for plaintiff who submitted that the plea of defendant No.1 that the additional documents sought to be placed on record were in possession of defendant No.1 cannot be accepted, as defendants might have initiated the process for registration of the trademark much before

filing of the written statement, however, did not disclose this fact in the written statement so filed. Learned counsel further submitted that the said defendant has not been able to show any reasonable cause for non-disclosure of the documents which are sought to be placed on record.

5. With regard to bringing on record partnership agreement dated 14.08.2020, deed of assignment, demand draft of Rs. 10,000 etc., learned counsel for plaintiff submitted that these are not relevant for the purposes of adjudication of the present disputes.

6. To submit that before leave of the court is granted for taking on record some documents at a belated stage, the party seeking to produce the documents must satisfy the court that the said documents were not within their knowledge, learned counsel for plaintiff relied upon a decision of this Court in *Polyflor Limited Vs. Sh. A.N. Goenka & Ors.* 2016 SCC OnLine Del 2333. Reliance was also placed upon a decision of Patna High Court in *Dewanti Devi and Others Vs. Radheshyam Tiwary and Others* 2019 SCC OnLine Pat 28 to submit that provisions of Order VIII Rule 1A(3) prove that the documents which have not been produced along with the written statement, cannot be produced to the Court later on without leave of the Court. Further, in support of his submission that a document filed beyond the stage prescribed for filing thereof, runs contrary to the case pleaded, learned counsel for plaintiff relief upon a decision of this Court in *Nitin Gupta Vs. Texmaco Infrastructure & Holding Limited* 2019 SCC OnLine Del 8367. Lastly, learned counsel submitted that the purport of Commercial Courts Act is to expedite the disposal of such suits and by filing such application, the defendant is trying to delay the proceedings and on this aspect, placed reliance upon decision of this Court in *Societe*

DES Produits Nestle S.A. & Anr. Vs. Essar Industries & Ors. 2016 SCC OnLine Del 4279.

7. In rejoinder, the stand of applicant/ defendant No.1 has relied upon Hon'ble Supreme Court's decision in *Sugandhi (Dead) by Legal Representatives and Another Vs. P. Rajkumar* (2020) 10 SCC 706 to submit that procedural and technical hurdles shall not be allowed to come in the way of court doing substantial justice. Learned counsel emphasized that defendant No.1 has been permitted to use "Sourabh Jindal" as his trade name and trademark and document in respect of registration thereof was not in possession of defendant No.1 at the time of filing of the written statement and no prejudice shall be caused to the plaintiff if these documents are taken on record.

8. Learned counsel representing both the sides were heard at length and record of this case has been carefully perused.

9. Pertinently, vide order dated 15.05.2019, this Court has passed the following interim directions:-

“With consent of counsels, till further orders, without prejudice to the rights and contentions of the parties, it is directed that the defendants shall forthwith stop using the mark 'JINDAL' per se in their trading name as well as trade mark but shall be entitled to use 'SOURABH JINDAL' as their trade name and trade mark.”

10. Thereafter, written statement on behalf of defendant No.1 was filed on 25.06.2019; issues were framed by this Court on 05.09.2019 and on 31.10.2019, after completion of admission-denial of documents and filing of list of witnesses and affidavit of plaintiff's witness- PW1, the matter was set down for examination and cross-examination of PW-1 on

16.01.2000. On the said date, PW-1 was partly cross-examined and thereafter on 08.03.2021 the present application was filed on behalf of defendant No.1.

11. Relevantly, the provisions of Order VIII Rule 1(3) CPC make it clear that *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.*

12. Relevantly, the documents sought to be placed on record clearly show that applications for registration of trademarks under Class 35 and 16 respectively were made on 07.06.2019, whereas written statement was filed thereafter on 25.06.2019. According to applicant/ defendant No.1, the registration of trademark “Sourabh Jindal” with the logo in Class 16 was granted on 31.01.2020 and Class 35 was granted on 18.02.2020. Though for the reasons best known to defendant No.1, the fact of having applied for registration of word mark “Sourabh Jindal” during pendency of this suit, was not mentioned in the written statement. However, it cannot be lost sight of that by virtue of interim order dated 15.05.2019, this Court had permitted the defendants to use the said trade/word mark and no restraint order in respect thereof was passed and after receipt of traded mark registration certificate, defendant No.1 has approached this Court to place the same on record. Relevantly, the suit is at the stage of cross-examination of PW-1 and parties are yet to establish their case with respect to use of trade mark “Jindal” on the basis of issues framed by this Court.

13. So far as with bringing on record partnership agreement dated 14.08.2020, deed of assignment, receipt of payment of demand draft of

Rs.10,000 etc. is concerned, this Court finds that defendant No.1 has brought to the notice of this Court that it has created a Limited Liability Partnership company in the name of Sourabh Jindal LLP from 14.08.2020, which is run by Mr. Dheeraj Aggarwal and Mr. Praful B. Bhatt besides him and has thereby informed the persons responsible in case of fixation of liability.

14. The Hon'ble Supreme Court in *Sugandhi (Supra)* has held as under:-

8. Sub-rule (3), as quoted above, provides a second opportunity to the defendant to produce the documents which ought to have been produced in the court along with the written statement, with the leave of the court. The discretion conferred upon the court to grant such leave is to be exercised judiciously. While there is no straitjacket formula, this leave can be granted by the court on a good cause being shown by the defendant.

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

15. Applying the pertinent observations of the Hon'ble Supreme Court in *Sugandhi (Supra)* to the case in hand, I find that without prejudice to the rights and contention of the parties, these documents can be taken on record. The present application is allowed and accordingly disposed of.

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16. Renotify on the date fixed i.e. 22.03.2022.

**(SURESH KUMAR KAIT)
JUDGE**

JANUARY 03, 2022

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