



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

% Judgment delivered on: 22.08.2025

+ **CS(COMM) 605/2024 & I.A. 34116/2024**

**CONDOR FOOTWEAR (INDIA) LIMITED
& ANR.**

.....Plaintiffs

Versus

**NEXGEN FOOTWEAR PRIVATE LIMITED
& ORS.**

.....Defendants

Advocates who appeared in this case

For the Plaintiff : Mr. Manish Biala, Advocate.

For the Defendants : Mr. Utsav Garg, Advocate.

**CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA**

JUDGMENT

TEJAS KARIA, J

OA No.74/2025

1. This is an Original Appeal filed by Defendants under Rule 5 of Chapter II of the Delhi High Court (Original Side) Rules, 2018 (“**DHC Rules**”) read with Section 151 of the Code of Civil Procedure, 1908 (“**CPC**”) against the Order dated 17.01.2025 (“**Impugned Order**”) passed by the learned Joint Registrar (Judicial) of this Court in CS(COMM) No.605/2024.



2. *Vide* Impugned Order, the learned Joint Registrar has held as under:

“The pleadings have been completed.

The counsel for the defendant is objecting to the taking on record of the documents filed by the plaintiff alongside the replication. The objection is overruled since the documents are part of the pleading i.e. the replication & are not causing any prejudice at this stage.

The parties shall now file the photocopies of their admitted-documents, if not already filed and the joint schedule of the documents.

List the matter for admission-denial and making of exhibits on 25.03.2025.”

3. It is submitted by the learned Counsel for the Defendants that the documents filed by the Plaintiffs along with the Replication was in response to the specific plea taken by the Defendants that the Plaintiffs did not show any cause of action arising against the Defendants to show that the Defendants were using the alleged Trade Mark. The Plaintiffs filed the additional documents along with their Replication without moving an appropriate application under the provisions of the Commercial Courts Act, 2015 (“CC Act”).

4. It was further submitted by the learned Counsel for the Defendants that the documents filed along with the Replication were belated as they were filed four months after filing of the present Suit. Hence, the documents were erroneously allowed to be taken on record by the learned Joint Registrar *vide* Impugned Order despite the objections by the Defendants.

5. It was submitted that the learned Joint Registrar has taken on record the documents filed by the Plaintiffs at a belated stage and in a mechanical manner without considering the objections of the Defendants that no



Application under Order XI Rule 15 of the CPC, as amended by the CC Act, to establish any reasonable cause for non-disclosure of these documents along with the Plaint.

6. It was submitted that the learned Joint Registrar while passing the Impugned Order observed that “..... *since the documents are part of the pleading i.e. the replication & are not causing any prejudice at this stage.*” It was further submitted that this observation is erroneous as the Impugned Order does not consider the requirements under Order XI Rule 1(4) and (5) of CPC, as amended by CC Act, that the plaintiff can only file additional documents within a period of thirty days from the date of filing the suit after obtaining leave of the Court. The Impugned Order allowed the additional documents to be taken on record despite the same being in power, possession, control, and custody of the Plaintiffs. The Plaintiffs have not stated that these documents were earlier in possession of the Plaintiffs at the time of filing of the present Suit. Although, the Plaintiffs had hired an investigator whose affidavit has been filed along with the Plaint, the Plaintiffs are not entitled to rely upon Additional Documents unless the express statutory provision under Order XI Rule 1(5) of CPC, as amended by CC Act is complied with by the Plaintiffs showing reasonable cause for non-disclosure and seeking leave of this Court for production of Additional Documents, which the Plaintiffs have failed to do.

7. It was submitted by the learned Counsel for the Defendants that the documents filed along with the Replication and taken on record *vide* Impugned Order are not executed after filing of the present Suit, but were in existence much prior thereto. The documents cannot be said to have been



filed in response to the case set out by the Defendants in the Written Statement. The documents are filed as an afterthought and in abuse of process of law by not following the mandatory requirements for production of Additional Documents. It was also submitted that the Plaintiffs have filed the Additional Documents to overcome the shortcomings in the case set out by the Plaintiffs in the Plaint and to remove lacuna of lacking material facts and documents to establish that the Defendants were using the Trade Mark ‘ENBLUE’ / ‘’ (“Impugned Trade Mark”), which is not permissible.

8. It was further submitted by the learned Counsel for the Defendants that the Additional Documents are unsigned and unverified without any details of when and how these Additional Documents came in possession of the Plaintiffs and why they were not filed along with the Plaint. The Plaintiffs have filed Additional Documents surreptitiously along with the Replication without obtaining the leave of this Court and without showing any reasonable cause for not filing the Additional Documents along with the Plaint or within the prescribed time period.

9. It was further submitted by the learned Counsel for the Defendants that the Impugned Order failed to consider the declaration in the Statement of Truth filed along with the Plaint that all the documents in the power, possession, control and custody of the Plaintiffs pertaining to the facts and circumstances of the proceedings have been disclosed and copies thereof were annexed with the List of Documents filed with the Plaint and that the Plaintiffs did not have any other document in their power, possession, control or custody. Accordingly, the Impugned Order ought not to have



allowed the Plaintiffs to file Additional Documents along with the Replication.

10. The learned Counsel for the Defendants relied upon the decision of this Court in ***CEC-CICI JV & Ors. v. Oriental Insurance Company Ltd.*** 2023 SCC OnLine Del 2797 holding that in a commercial suit, the documents have to be filed as per Order XI of CPC, as amended by the CC Act, which requires that all documents in the power, possession, control or custody of the plaintiff should be filed along with the plaint. In case of urgent filing, the plaintiff is permitted to file additional documents within thirty days of filing of the suit subject to grant of leave by the Court. Any documents sought to be filed after that period have to be filed with the leave of the Court on the plaintiff establishing reasonable cause for non-disclosure of the documents along with the Plaint as per Order XI Rule 1(5) of CPC, as amended by the CC Act. The timelines are to be strictly followed in the Commercial Suits.

11. The learned Counsel for the Defendants relied upon the decision of this Court in ***Saregama India Ltd. v. ZEE Entertainment Enterprises Ltd.*** 2023 SCC OnLine Del 2437, which held that:

“29. Sub-Rule (5) mandates that the plaintiff shall not be allowed to rely on documents which were in the plaintiffs power, possession, control or custody and not disclosed in the plaint and nor filed within the extended period as provided in sub-Rule (4) except with the leave of the Court and upon showing reasonable cause for the same.

30. In Nitin Gupta (supra), relied upon by the defendant, a Co-ordinate Bench of this Court had observed as under:

“38. Unless, the Commercial Divisions, while dealing with the commercial suits, so start enforcing Rules legislated for



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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. The plaintiff herein has utterly failed in this regard. The application nowhere explains as to why the plaintiff, if had obtained the said letter from the defendant, did not remember the same and make disclosure of the same at the time of filing the police complaint and/or at the time of filing of this suit, even if the letter had been misplaced or was not immediately available. The form prescribed for filing affidavit of documents requires a litigant in a commercial suit to, even if not immediately possessed of a relevant document, disclose the same. A litigant who fails to do so and also does not satisfy the Court while seeking to belatedly file the document, why no disclosure of such document was made, cannot be permitted to so file documents.”

39. In a commercial suit, the plaintiff cannot be permitted to file additional documents at any stage of the suit on the ground that the same are in response to the case set up by the defendant in the written statement. Permitting a party to file additional documents at any stage would make a complete mockery of Order XI of the CPC as applicable to commercial suits. The whole object of the aforesaid provisions of the CPC pertaining to commercial suits would be defeated if a party is permitted to file additional documents at any stage of the suit.”

12. In view of the above, the learned Counsel for the Defendants prayed for setting aside of the Impugned Order and direct to take off record the Additional Documents filed along with the Replication and disallow the



Plaintiffs to rely upon these Additional Documents and consequently, dispensed with the Admission / Denial of the said documents.

13. Notice in this Appeal was issued on 24.04.2025 and the Plaintiffs were granted four weeks for filing the Reply to this Appeal. However, the learned Counsel for the Plaintiffs at the hearing held on 24.07.2025, submitted that the Plaintiffs do not wish to file Reply to this Appeal.

14. The learned Counsel for the Plaintiffs submitted that the Additional Documents filed along with the Replication were in response to the averments made by the Defendants in the Written Statement which in Paragraph No. 10 of the Preliminary Objections states as under:

“10. That even otherwise the Defendants herein without admitting anything stated in the Plaint to be true, undertakes and submits that the Defendant No.1 has never manufactured marketed or offered to sell this product using the Trademark in dispute and even otherwise does not intend to use this particular Trademark in dispute in future, hence the question of infringement of trade mark does not arise at all and therefore this plaint can be closed on this premise itself”

15. In response to Paragraph No. 10 of the Preliminary Objections in the Written Statement filed by the Defendants, the Plaintiffs have in Paragraph No. 18 of the Replication has stated as under:

“18. That the contents of Paragraph 10 are denied. It is denied that the Defendants have never manufactured, marketed or offered to sell goods under the infringing mark. As mentioned hereinabove, the Defendants have been manufacturing and exporting ENBLUE branded products from Mundra Port in India to Mogadishu in Somalia. Therefore, the Defendants have lied and made a false statement on oath in the WS that they are not dealing in the impugned goods. The Plaintiff reserves its right to initiate appropriate proceedings against the Defendants under Section 246 of the Bharatiya Nyaya Sanhita 2023 for dishonestly making false claim in court.”



16. The learned Counsel for the Plaintiffs relied upon Rule 5 of the DHC Rules, which provides as under:

*“5. **Replication.**-The replication, if any, shall be filed within 30 days of receipt of the written statement. If the Court is satisfied that the plaintiff was prevented by sufficient cause for exceptional and unavoidable reasons in filing the replication within 30 days, it may extend the time for filing the same by a further period not exceeding 15 days but not thereafter. For such extension, the plaintiff shall be burdened with costs, as deemed appropriate. The replication shall not be taken on record, unless such costs have been paid/ deposited. In case no replication is filed within the extended time also, the Registrar shall forthwith place the matter for appropriate orders before the Court. An advance copy of the replication together with legible copies of all documents in possession and power of plaintiff, that it seeks to file along with the replication, shall be served on the defendant and the replication together with the said documents shall not be accepted unless it contains an endorsement of service signed by the defendant/ his Advocate.”*

17. In view of the above, the learned Counsel for the Plaintiffs has submitted that the documents filed along with the Replication were in response to the averments made by the Defendants in the Written Statement as specifically permitted under Rule 5 of the Rules. Accordingly, Application under Order XI Rule 1(5) of CPC, as amended by the CC Act, was not required to be filed.

18. Having considered the submissions of the learned Counsel for the Defendants and the Plaintiffs and the documents filed along with the Replication, it is evident that the Plaintiffs have sought to place reliance upon certain invoices and export documents showing sale and export of products containing Impugned Trade Mark.



19. In the Written Statement, the Defendants have taken a categorical stand that the Defendant No. 1 had never manufactured, marketed or offered to sell the product using the Impugned Trade Mark. In response, the Plaintiffs in their Replication have stated that the Defendants are manufacturing and exporting the products using the Impugned Trade Mark from Mundra Port, Gujarat in India to Mogadishu in Somalia.

20. The documents filed by the Plaintiffs along with the Replication show Bill of Lading and Commercial Invoices issued by Defendant No. 1 in favour of AL HUDA, Bakaro Market, Mogadishu, Somalia showing the description of goods with the Impugned Trade Mark.

21. Hence, the documents sought to be placed on record are in the nature of responsive documents to the averments made by the Defendants in the Written Statement. These documents are relevant for determining the controversy between the Parties. Further, Rule 5 of the DHC Rules also permits the documents to be filed along with the Replication.

22. Accordingly, there is no infirmity with the Impugned Order and no interference is required in this Appeal as prayed by the Defendants. However, the Defendants are given liberty to produce any additional documents in response to the documents filed along with the Replication by the Plaintiffs within a period of four weeks from the date of this Judgment.

23. In view of the above, the present Appeal is dismissed with the aforesaid directions.



CS(COMM) 605/2024

24. List before the learned Joint Registrar (Judicial) on 17.11.2025, the date already fixed.

AUGUST 22, 2025
'gsr'

TEJAS KARIA, J