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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 1941/2009**
EDUCOMP SOLUTIONS LIMITED Plaintiff

Through None
versus

NEW AGE KNOWLEDGE SOLUTIONS
PRIVATE LIMITED Defendant

Through None

CORAM:

SH. RAJESH KUMAR SINGH (DHJS), JOINT REGISTRAR

ORDER

% **08.03.2017**

IA No. 11574/2016 (under Order VII Rule 14 CPC filed by plaintiff)

1. By way of this IA, plaintiff has prayed for leave to place on record seven documents marked as Annexure A1 to A7 to the IA. Defendants have not filed reply and the IA has been orally opposed by learned counsel for defendants.
2. Issues were framed by Hon'ble Court vide order dated 09.07.2013. Plaintiff's witness is yet to be examined. Learned counsel for defendants submitted that most of the documents mentioned in the IA were in existence before filing of the suit and there is no justification for not filing the same with the plaint. Filing of these documents at this stage will prejudice the defendants. Learned counsel also submitted that the documents are not relevant. Special reference was made to Annexure A1, Annexure A2 and Annexure A5. In support of their submissions, learned counsel for defendants relied upon judgements by Hon'ble Delhi High Court in the matter of Asia Pacific Breweries Vs. Superior Industries reported as 2009



(109) DRJ 497 and judgment by Hon'ble Kerala High Court in the matter of Bhanumathi Vs. K. R. Sarvothaman And Another reported as 2010 (4) ILR 752. Learned counsel for plaintiff has relied upon judgment by Hon'ble Bombay High Court at Goa in the matter of Nurallah Kamruddin Veljee Vs. Vishwambhar Kashinath Palekar reported as MANU/MH/0179/2016. Learned counsel for plaintiff submitted that court has to see whether the documents are required to adjudicate the case between the parties effectively and whether any prejudice will be caused to the opposite side. According to learned counsel for plaintiff, the documents are necessary for adjudication of the dispute and no prejudice will be caused to the defendants.

3. I have considered the submissions made by learned counsel for the parties and I have perused the record. Plaintiff has not given clear reason for not filing these documents earlier. In paragraph 5 it is stated that the documents which the plaintiff wants to place on record could not be filed earlier since the trademark applications and the list of franchisees are updated versions of the documents already on record. It is also stated that the plaintiff has referred to the documents but inadvertently they were not filed by the previous counsel for the plaintiff.
4. Perusal of record shows that documents were filed with the plaint by the plaintiff with list dated 13.10.2009. It is not correct that no documents were filed by the earlier counsel as the impression is created by the averments in para 5 of the IA. The trademarks applications and the list of franchisees may be updated versions



but it is not correct to say that all documents could not be filed earlier due to inadvertence of the earlier learned counsel. Be that as it may, I shall examine whether the documents are required for effective adjudication of the dispute between the parties. I shall consider each document individually. In case, the answer is in affirmative, I shall consider whether prejudice will be caused to the defendants.

5. Annexure A-1 is the updated version of the trademark applications of the plaintiff. It is stated that these documents are in support of averments made in para 4 of the plaint. With the list dated 13.10.2009 also copies of trademark applications were filed as Annexure P-2 (colly). Allegation of the plaintiff is that defendants have copied his business model for the pre-school. Plaintiff runs its business of pre -school under the brand name 'Roots to Wings'. Defendant No.1 is doing its business under the brand name ' I play I learn'. The brand name 'Roots to Wings' is not in dispute in the present suit. The other brand allegedly owned by the plaintiff have no relevance to the present case. It is also to be noted that in support of trade mark registration, legal proceeding certificates are admissible in evidence. The updated versions of the trade mark applications proposed to be filed as Annexure A-1 will not serve any purpose.
6. Annexure A-2 is annual report for the year 2014-15. It is stated that this document is filed in support of the averments made in para 1 of the plaint where plaintiff has claimed that it is ranked as India's largest provider of technology based education products



and services for kindergarten to 12th grade. Suit was filed in the year 2009 and the annual report of 2014-15 cannot support the statement which was in respect of the status of the plaintiff at the time of filing of the suit. In this suit, issue of damages is also there. Plaintiff does not say that Annexure A-2 is relevant for the issue of damages. In the plaint, it is stated that due to acts of the defendants, its business 'Roots to Wings' suffered and many franchisees wanted to terminate the agreement. It is stated in the IA that the annual report of 2014-15 shows that plaintiff made significant progress in the education sector. The annual report does not show that plaintiff suffered losses in its business of pre-school education. Therefore, Annexure A-2 is also not relevant.

7. Annexure A-3 is stated to be an article published in Forbes magazine wherein plaintiff has been bestowed with 'Best Under a Billion' accolade. It is stated that this document is being filed in support of averments made in para 3 of the plaint. It is true that in para 3 of the plaint, reference has been made to Forbes magazine 'Best Under a Million' and this averment has not been specifically denied by the defendants in the written statement. However, what is proposed to be filed as Annexure A-3 is a computer printout and not an article from the magazine. It is also not accompanied by certificate under Section 65B of Indian Evidence Act. There is no proper explanation why this document was not filed along with the plaint. For these reasons, plaintiff cannot be permitted to place on record Annexure A-3 also.
8. Annexure A-4 is an appointment letter dated 13.02.2008 issued by



defendant No.2 to Mr. Pritesh for the post of Senior Executive-Interactive Media. It is stated in the IA that this appointment letter will validate the averments made in para 6 of the plaint and it will show that defendant No.2 exercised immense control. He recruited professionals in his own terms and complete freedom was given to him by the plaintiff. Para 6 of the plaint describes the job responsibility of defendant No.2. It is not stated in paragraph 6 that defendant No.2 had absolute freedom to hire people on his own terms. Plaintiff is trying to set up a new case against defendant No.2 by introducing this document.

9. Annexure A-5 is the updated list of franchisees. It is stated that this document will corroborate the averments made in para 10 of the plaint. The reasoning given by this court in respect of Annexure A-2 applies to Annexure A-5 also. Suit was filed in the year 2009 and the list of franchisees was filed with the plaint as Annexure P-8. Annexure A-5 has no relevance for adjudication of the dispute between the parties.
10. Annexure A-6 is the training manual and study material of the plaintiff. It is stated that this document is in support of para 21 of the plaint. With the plaint, list of the confidential information was filed as Annexure P-6. Plaintiff did not compare its own training and study material with the material of the defendants before filing of the suit and making the allegations that defendants had copied its model. Defendant No.2 has taken this objection in the written statement. The training and the study material of the plaintiff was in existence when the suit was filed. These documents could have



been material if there were specific instances of copying mentioned in the plaint and the material of the defendants was also placed on record. Taking the material now on record is not going to help in adjudication of the dispute. It will also prejudice the defendants.

11. Annexure A-7 is screenshot of website of the plaintiff. In para 15 at internal page 23 of the plaint, it is stated that the content of the website interface of defendant No.1 business initiative is also in essence similar to the interface of the plaintiff's website. Plaintiff has not filed the website interface of defendant No.1. Annexure A-7 is not legible. It does not show when the website was created. It is not accompanied by certificate under Section 65B of the Indian Evidence Act. Therefore, this document is also not helpful for adjudication of the dispute between the parties.
12. For the reasons mentioned above, it is held that leave cannot be granted to the plaintiff in respect of any document filed along with the IA. IA is dismissed.

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Evidence affidavit be filed by the plaintiff within eight weeks, if not already filed. Copy be supplied in advance to learned counsel for defendants.

List on 24th and 25th July, 2017 for PE.

**RAJESH KUMAR SINGH (DHJS)
JOINT REGISTRAR**

MARCH 08, 2017/ms