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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (L) NO. 22154 OF 2025
IN
COMMERCIAL (IP) SUIT NO. 22108 OF 2025**

Atomberg Technologies Private Limited ... Applicant/Plaintiff

vs.

Stove Kraft Limited ... Defendant

Dr. Veerendra Tulzapurkar, Senior Advocate a/w. Mr. Hiren Kamod, Mr. Vaibhav Keni, Mr. Prem Khullar, Ms. Neha Iyer and Ms. Vatsala Batra i/b. Legasis Partners for the Plaintiff.

Mr. Venkatesh Dhond a/w. Mr. Akshay Patil, Mr. Akshay Kamble, Ms. Neha Patil, Ms. Trupti Poojari and Ms. Siddhi Kolap i/b. Vivaka Partners for the Defendant.

CORAM : GAURI GODSE, J.

DATED : 15th DECEMBER 2025

ORDER:

1. This application is filed under Order XXXIX Rule 1 read with Order XL Rule 1 of the Code of Civil Procedure, 1908 ("CPC") for interim relief pending the suit. By order dated 24th July 2025, an ex parte interim relief is granted. The defendant has presented an affidavit-in-reply dated 28th August 2025.



2. Learned senior counsel for the plaintiff seeks leave to file an affidavit-in-rejoinder. He submits that in view of the case set up by the defendant in paragraph 47 of the affidavit-in-reply, the plaintiff would be entitled to file an affidavit-in-rejoinder and produce on record additional documents and also deal with the overall pleadings in the affidavit-in-reply.

3. Learned senior counsel for the plaintiff relies upon the decision of this court in the case of ***Sony Music Entertainment Private Limited vs. Ilaiyaraaja Music N Management Private Limited and Others***¹. He submits that this court has taken a view that, considering the provisions of Order XI Rule 1(1) (c) (ii) of the CPC, the plaintiff is entitled to file additional documents and a rejoinder in answer to any case set up by the defendant after the filing of the plaint. He therefore submits that, in view of the case set up by the defendant in the affidavit-in-reply, in response to the pleadings in paragraph 16 of the plaint, it would be necessary for the plaintiff to file a rejoinder to respond to the case set up by the defendant in the affidavit-in-reply. He submits that the defendant has raised objections on the design registration of the plaintiff and the invoices referred

¹ IAL-25506-2023-COMIP-560-2022



to by the plaintiff; hence, it would be necessary for the plaintiff to produce on record additional documents to respond to the allegations in the reply. He therefore seeks leave to file a rejoinder affidavit to the affidavit-in-reply.

4. The learned senior counsel for the defendant submits that the contentions in the affidavit-in-reply are in response to the pleadings and the documents annexed to the plaint. He points out that there is no new case made out or set up by the defendant which would fall within the meaning of Order XI Rule 1(1)(c)(ii) of the CPC. He submits that what cannot be permitted in view of sub-rule (5) of Rule 1 of Order XI, cannot be brought on record by relying upon sub-rule (1)(c)(ii) of Rule 1 of Order XI of the CPC.

5. In the present case, the plaintiff, in paragraph 16, has pleaded regarding the sale of fans following the filing of the registration application on 1st January 2020. The plaintiff has filed copies of representative invoices and printouts of certain publicity material relating to the registered design of the fan. In response to the plaintiff's pleadings regarding goodwill and reputation, the defendant, in its reply, contends that, according



to the plaintiff's pleadings and documents, only 157 fans under the alleged registered design have been sold since 2020. On perusal of the affidavit-in-reply, it is seen that all the contentions in the affidavit-in-reply are in response to the pleadings in the plaint. There is no new case set up in the affidavit-in-reply.

6. To verify whether the case set up in the affidavit-in-reply would fall under the grant of leave as contemplated under Order XI Rule 1 (1)(c)(ii) of the CPC, the reply needs to be considered to find out whether it refers to the events after the filing of the plaint or some factual averment that cannot be made referable to the original pleadings in the plaint or the documents. For example, the plaintiff would have to show a reasonable and justifiable cause as to why the pleadings or documents sought to be brought on record by way of a rejoinder could not have been brought on record at the time of filing the plaint. A contention raised in the form of a submission in response to the plaintiff's pleadings would not fall under the expression 'case set up'. In the decision of this court relied upon by the learned senior counsel for the plaintiff, the plaintiff's application to produce additional documents was filed



in response to the written statement, based on events that occurred after the filing of the plaint. Hence, this court permitted the plaintiff to file additional documents on record. In the present case, no such case is made out by the plaintiff for leave to produce additional documents.

7. Filing of the pleadings is governed by the procedure contemplated under Order VIII of the CPC. Rule 9 of Order VIII of the CPC provides that no pleading subsequent to the written statement of a defendant, other than by way of defence to set-off or counter-claim, shall be presented except with leave of the court. Rule 129 IX-A of Chapter IX-A of The Bombay High Court (Original Side) Rules, 1980 ('OS Rules'), dealing with Interim Applications, provides that no affidavit-in-rejoinder shall be filed without leave of the Court.

8. In the present case, learned senior counsel for the plaintiff requested leave to file an affidavit-in-rejoinder to bring on record additional documents in response to the defendant's contentions raised in the affidavit-in-reply. It is therefore necessary to understand the amended Order XI of the CPC applicable to the suits filed in the commercial division.



9. In view of Rule 1 of Order XI of the CPC, the plaintiff is under an obligation to file a list of all documents and photocopies of all documents in its power, control or custody pertaining to the suit, along with the plaint, including the documents referred to and relied on in the plaint. An exception is provided under clause (c) of sub-rule (1) of Rule 1 of Order XI that the said Rule shall not apply to documents produced by plaintiff for the cross-examination of the defendant's witness or in answer to any case set up by the defendant, subsequent to the filing of the plaint or the document handed over to a witness merely to refresh his memory. The sub-rule (3) of Rule 1 requires 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 proceedings initiated by him have been disclosed and copies thereof are annexed with the plaint and that the plaintiff does not have any other documents in its power, possession, control or custody. A format of the statement of truth is also provided in the Appendix.

10. The sub-rule (4) of Rule 1 provides for a contingency in



case of urgent filings where 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 the court, the plaintiff shall file such additional documents in court within 30 days of filing of the suit along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control, or custody. The sub-rule (5) of Rule 1 prevents the plaintiff from relying upon documents which were in 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 the court and such leave shall be granted only upon the plaintiff, establishing reasonable cause for non-disclosure along with the plaint.

11. Therefore, from a conjoint reading of all the above provisions, it is clear that the leave as contemplated under the said rules is not an empty formality, and it can be granted if the plaintiff shows a reasonable cause. In the decision of ***Sony Music Entertainment India Private Limited***, this court was dealing with an interim application of the plaintiff seeking permission to produce documents on the ground that at the



time of filing of the plaint, there was no challenge to the decree in favour of the plaintiff; however, subsequent to the filing of the suit the decree was challenged in the Madras High Court and the declaration was stayed. The defendant, in the written statement, relied upon the said order of the Madras High Court. Hence, this Court held that from a plain reading of Order XI Rule 1 (1)(c)(ii), it is apparent that Order XI Rule 1 does not apply to documents produced by the plaintiff and is relevant only in answer to a case set up by the defendants subsequent to the filing of the plaint. It is held that in the event the plaintiff is able to establish that the documents were necessary to be produced by the plaintiff in answer to the case set up by the defendant, then the rigors of Order XI Rule 1 of the CPC would not apply.

12. Thus, in view of Rule 9 of Order VIII of the CPC read with Section 141 of the CPC and Rule 129 IX-A of the OS Rules, filing of an affidavit-in-rejoinder is not a matter of right. Similarly, a grant of leave is not an empty formality. In the absence of any justifiable and reasonable cause shown by the plaintiff, leave to file an affidavit in rejoinder cannot be granted as a matter of



course.

13. It is necessary to note that the present suit is still pending at the stage of lodging, and the plaintiff has made no effort to get the writ of summons issued to the defendant. The suit is filed in the commercial division of this court. The amended Rule XVA of the CPC, applicable to suits filed in the commercial division, provides for a case management hearing to address the procedures to be followed, with the objective of the speedy disposal of such suits. The rule also provides that, after the issues are framed, the suit must be decided within six months. Therefore, if, in the absence of a justifiable and reasonable cause shown, leave to file an affidavit-in-rejoinder is granted as an empty formality, it will defeat the very object of speedy disposal of the suits governed by the Commercial Courts Act.

14. In the present case, neither a reasonable cause nor any justifiable reason is shown for the grant of leave to file an affidavit-in-rejoinder in response to the affidavit-in-reply filed in the interim application filed under Order XXXIX Rule 1 read with Order XL of the CPC. Rule 3A of Order XXXIX provides



that where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted. The said provision further states that where the court is unable to decide it within the stipulated time, the court shall record reasons for such inability. The present suit is still pending for registration. An ex parte ad interim relief has been granted by this court on 24th July 2025. The plaintiff has filed an application for taking action under Order XXXIX Rule 2A of the CPC on the ground that there is a breach of the order of ex-parte injunction. An affidavit-in-reply and a rejoinder have been filed in the said application. The defendant has also filed an application under Order XXXIX Rule 4 of the CPC for modification or variation of the order of injunction. The interim application filed under Order XXXIX Rule 1 is still pending, and only an ex parte ad interim relief is granted. Accordingly, the main application for interim relief must be decided first without further delay.

15. Learned senior counsel for the plaintiff seeks time till 6th January 2026 for the hearing of the interim application for



interim relief.

16. By consent, list the application for hearing on 6th January 2026.

17. In the meantime, the learned Advocate for the plaintiff shall ensure that the suit and interim application are registered. Learned senior counsel for the plaintiff submits that all office objections have been removed. The office shall therefore verify the suit and interim application and, if the objections are removed, register the suit and interim application before the next date.

18. Ad-interim relief already granted to continue till the next date.

19. Stand over to 6th January 2026.

(GAURI GODSE, J.)