

[Get this document in PDF](#)
[Print it on a file/printer](#)
[Download Court Copy](#)

Try out our **Premium Member** services: *Virtual Legal Assistant*, *Query Alert Service* and an ad-free experience. *Free for one month* and pay only if you like it.

## Delhi High Court

### Qrg Enterprises & Anr vs Hpl (India) Limited & Ors on 20 December, 2016

\$~21.

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) No.1218/2016

QRG ENTERPRISES & ANR. . . . . Plaintiffs

Through: Mrs. Pratibha M. Singh, Sr. Adv. Ms.

Jaya Mandelia, Ms. Kangan Roda and

Mr. Nikhil Lal, Advs.

Versus

HPL (INDIA) LIMITED & ORS. . . . . Defendants

Through: Mr. Sanjeev Sindhvani, Sr. Adv. with

Mr. Sanjay Dua, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% 20.12.2016 IA No.15867/2016 (of the plaintiffs under Order XVIII Rule 4 (7) read with Order XXVI Rule 4 for fixing fee of Local Commissioner and for direction for recording evidence on day-to-day basis).

1. One of the prayers in this application which has come up today for the first time is for disposal of IA No.13670/2016 filed by the plaintiffs and listed for hearing before the Joint Registrar on 6th February, 2017.

2. The senior counsel for the defendants appears on advance notice. Though he initially resisted arguing IA No.13670/2016 stating that reply thereto is yet to be filed and the same is listed for arguments before the Joint Registrar but has been prevailed upon to address on the said application also.

3. The counsels have been heard.

4. This suit instituted in the year 2004 was consolidated for the purposes of trial with CS(OS) No.928/2010 (instituted in the year 1990) and with CS(OS) No.929/2010 (instituted in the year 1988). The plaintiffs and the defendants in all the three suits are represented by the same set of counsels.

5. Mr. K.S. Khurana (Retd.) Additional District Judge (ADJ) was appointed as the Court Commissioner to record evidence only of Mr. Qiamat Rai Gupta of the plaintiffs. Mr. Qiamat Rai Gupta died before the recording of his statement could be completed.

6. The plaintiffs have filed IA No.13670/2016 for (i) for permission that the documents filed in any of the three suits be permitted to be proved without the documents filed in the other two suits being required to be filed in this suit; (ii) for the documents proved in the part recorded statement of Mr. Qiamat Rai Gupta to be not required to be proved again; (iii) for the new documents filed along with the affidavits by way of examination-in-chief of new witnesses filed by the plaintiffs to be taken on record; and, (iv) for the originals of the documents being permitted to be produced at the time of recording of evidence.

7. As far as the first of the aforesaid prayers is concerned, the senior counsel for the defendants has no objection.

8. The second of the aforesaid prayers cannot be permitted in law. Once the statement of Mr. Qiamat Rai Gupta has not been completed, it is not to be read in evidence and any documents proved by him cannot be read in evidence without being proved again by the witnesses now to be examined by the plaintiffs inasmuch as the defendants did not complete the cross examination of Mr. Qiamat Rai Gupta.

9. As far as the fourth of the aforesaid prayers about producing the originals at the time of recording of evidence is concerned, the same is also in accordance with *Aktiebolaget Volvo Vs. R. Venkatachalam* 160 (2009) DLT 100 and the senior counsel for the defendants has no objection.

10. With respect to the third of the aforesaid prayers, the senior counsel for the defendants objects to the filing of fresh documents now. On enquiry as to what is the nature of the said documents it is stated that the claim of the plaintiffs in the suits is of the trademark "HAVELL"S" being a well-known trademark; the question whether "HAVELL"S" was a well-known trademark as claimed in the plaints in the suits instituted in the years 1988, 1990 and 2004 has to be tested on the anvil of the position existing as on that date and the documents now filed by the plaintiffs of subsequent dates since the pendency of the suit can have no bearing on the question whether on the date of institution of the suit the trademark was well-known or not.

11. I am unable to agree with the contention of the senior counsel for the defendants. The Court cannot shut its eyes to the fact that, even if for the reason of delays of the parties, the suits have remained pending since 1988, 1990 and 2004. The mandate of the Court under the Code of Civil Procedure, 1908 (CPC) (See Order VII Rule 7 of the CPC) is to take notice of subsequent events while passing the order/decreed. Merely because a suit has remained pending for decades, a plaintiff cannot be called upon to file a fresh suit to be able to get relief as may be entitled to on the date of decision of the suit.

12. The senior counsel for the defendants has then contended that no reasons have been given for the delay in filing of documents.

13. The senior counsel for the plaintiffs responds by contending that owing to the suits remaining pending for long and the confusion of three suits, the documents remained to be filed and further contends that most of the documents sought to be filed now are documents of a date subsequent to the institution of the suits. The senior counsel for the plaintiffs has also stated that the Court Commissioner appointed for recording of evidence can record the objection as to the new documents filed. Reliance in this regard is placed on the order dated 6th April, 2010 in FAO(OS) No.216/2010 titled *Exide Industries Ltd. Vs. Exide Corporation USA*.

14. I am unable to agree with the last of the aforesaid contentions of the senior counsel for the plaintiffs. A document not filed within the time prescribed for filing thereof is as good as not on record and the question of any of the parties to a litigation being permitted to prove the same does not arise. The order of the Division Bench cannot be read as sought to be done.

15. The senior counsel for the plaintiffs has also referred to the amendment to Order XIX of the CPC by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and contends that Order XIX Rule 6 (e)(iv) as applicable to the Commercial Courts Act permits filing of new documents along with the affidavit as well.

16. Order XIX Rule 6 (e)(iv) is as under:-

"6. Format and guidelines of affidavit of evidence.-- An affidavit must comply with the form and requirements set forth below:

.....

(e) an affidavit should--

(i) have the pages numbered consecutively as a separate document (or as one of several documents contained in a file);

(ii) be divided into numbered paragraphs;

(iii) have all numbers, including dates, expressed in figures; and

(iv) if any of the documents referred to in the body of the affidavit are annexed to the affidavit or any other pleadings, give the annexures and page numbers of such documents

that are relied upon."

17. Clause (iv) aforesaid cannot in my opinion be read as permitting a party to a suit who has not filed documents at the stage prescribed for filing thereof to, for the first time along with an affidavit by way of examination-in-chief file new documents. If the same were to be read and interpreted as sought, the same would nullify the other provisions of the CPC prescribing the stage for filing of documents. Moreover, new documents if permitted to be filed along with the affidavits of examination-in-chief would make the trial haphazard with opposing party being caught by surprise by documents filed for the first time along with affidavit by way of examination-in-chief and seeking adjournments for the purposes of cross-examination on the said ground. Order XIX Rule 6 (e)(iv) as applicable to commercial suits has thus to be read as meaning documents referred to in the body of the affidavit and annexed to the affidavit and copies whereof are already on record or which were permitted to be filed along with the affidavit.

18. I am however otherwise, for the reason of the fact that though recording of statement of Mr. Qiamat Rai Gupta the first witness of the plaintiffs was commenced but remains incomplete and the first witness of the plaintiffs is still to be examined and for the reason of the documents being largely of a date subsequent to the institution of the suits which were filed long back, of the view that the documents even if filed for the first time with the affidavit already filed be permitted to be taken on record subject to the plaintiffs paying costs of Rs.50,000/- to the counsel for the defendants on or before 23rd December, 2016. If the cost is not so paid, the documents filed for the first time shall not be taken into consideration.

19. IA No.13670/2016 is allowed on the aforesaid terms and disposed of.

20. As far as the other reliefs claimed in IA No.15867/2016 are concerned, there is no opposition thereto.

21. Accordingly, IA No.15867/2016 is disposed of by requesting Mr. K.S. Khurana to record evidence in the suits and his fee for recording of such evidence is fixed, as agreed by the parties, @ Rs.25,000/- for each date of hearing besides out of pocket expenses, to be shared equally by both the parties.

22. The senior counsel for the plaintiffs on instructions states that the plaintiffs have to examine about six witnesses and the senior counsel for the defendants on instructions states that though the defendants have not filed any list of witnesses but their witnesses would also be not more than six.

23. The defendants to file their list of witnesses by way of last opportunity on or before 5th January, 2017.

24. The Court Commissioner is requested to complete the recording of evidence on or before 31st July, 2017.

25. The parties to commence recording evidence latest by 10th January, 2017 and may fix the date and time in consultation with the Court Commissioner.

26. The Registry is directed to send the files of the suits at the place and time fixed by the Court Commissioner for recording of evidence.

27. The Court Commissioner is granted liberty to have the matter placed before the Court, if any of the parties are found delaying recording of the evidence.

28. List all the suits before the Court on 28th August, 2017.

29. The date of 6th February, 2017 before the Joint Registrar is cancelled.

RAJIV SAHAI ENDLAW, J.

DECEMBER 20, 2016 „pp“