

Special Legal Issues Seminar

CPC Order XI Rule 14 for Different Types of Documents in Different Types of IP LawSuits

Introduction

- ❖ Parties are entitled to know the material facts and relevant documents in the power and possession of opponent.
- ❖ Types of Facts –
 - *Facto probanda* – the facts which constitute a party's case.
 - *Facto probantia* – the facts by which the said case is to be proved
- ❖ Discovery by Interrogatories [Order XI Rule 1 to 11]
- ❖ Discovery of Documents [Order XI Rule 12-14].

Relevant Provisions of the Code of Civil Procedure, 1908

❖ Order XI Rule 12 – Application for discovery of documents

- “Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion be thought fit: Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.”

❖ Order XI Rule 13- Affidavit of documents

- “The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No. 5 in Appendix C, with such variations as circumstances may require.”

Relevant Provisions of the Code of Civil Procedure, 1908 (Contd.)

❖ Order XI Rule 14 – Production of documents

- *“It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.”*

❖ Order XI Rule 15- Inspection of documents referred to in pleadings or affidavits

- *“Every party to a suit shall be entitled [at or before the settlement of issues] to give notice to any other party, in whose pleadings or affidavits reference is made to any document, [or who has entered any document in any list annexed to his pleadings,] to produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.”*

Relevant Case Laws

- ❖ ***Ram Hari De Gupta v. Niranjana Krishna Das and Co.* [50 Cal WN 845]**
 - *The important words in Or. 11, r. 14, C. P. C., that determine the power of the Court are the words "it shall be lawful." Prima facie these words import discretion and they have been judicially construed as discretionary unless there be anything in the subject-matter to which they are applied or in any other part of the statute to show that they are meant to be imperative...Considering the language of the rule with reference to the context, I do not find any circumstances from which I could conclude that a duty was imposed upon the Court under Or. 11, r. 14, C. P. C. I therefore hold that the words "it shall be lawful...are merely enabling.*

- ❖ ***Naveen Jindal v. Zee Media Corporation Ltd.* [2017 (164) DRJ 176]**
 - *“Reliance placed on Arun Jaitley (supra) is also misplaced. The Court rejected the defendant's application under Order XI Rules 12 & 14 CPC since the defendant by the said application sought production by the plaintiff of the records of the plaintiff's bank accounts as well as those of his family members....the documents sought from the plaintiff are nothing but in the nature of fishing and roving inquiry. The Court further observed that it is for the applicant/ defendant No.1 to adduce evidence of the accounts from which monies are alleged to have flowed to plaintiff and to his family members....in the present case, the factum of telecast and publication of the offending programme and news article is not in dispute and the originals of these documents are in power and possession of the respective defendants.*

Relevant Case Laws (Contd.)

❖ ***Vipul Gupta & Ors. v. Robin Gupta & Ors.* [243 (2017) DLT 675]**

- “ *On perusal of the pleadings as well as the documents sought, it is clear that the defendant is seeking to make a roving and fishing enquiry into the personal records of the plaintiffs which are not relevant or material for the purpose of adjudicating the issues at hand.*”

❖ ***Rajesh Bhatia And Ors. v. G. Parimala And Anr.*, [2006 (3) ALD 415]**

- “*If the documents are public documents and are in the custody and possession of the public servants who are empowered to grant certified copies thereof, it shall be the endeavour of the party who require them to obtain certified copies whereof in the first instance and produce the same before the Court. If for any reason, certified copies could not be issued, it is open to the party to approach the Court and request it to send for those documents from the possession of the public servant. Rule 128 and 129 of the Civil Rules of Practice clearly envisage the practice in such cases. When that be the procedure to be followed, filing an application under Order 11, Rule 14 of the Code seeking a direction to be issued to the adversary for production of such documents is not the correct approach.*”

Relevant Case Laws in IP

- ❖ ***Mr. M. Sivasamy v. M/S. Vestergaard Frandsen A/S & Ors.*** [FAO(OS) 206/2009, FAO(OS) 207/2009 & FAO(OS) 211/2009 (2013) 1 SCC 625]
- *“A reading of the aforesaid provisions of Order 11 Rules 12 and 14 bring out certain salient features as under:*
 - (i) The documents sought to be discovered and produced have to be relevant to the matter in controversy viz matters in question.*
 - (ii) The documents have to be in the possession and power of the person against whom discovery and production is sought.*
 - (iii) Discovery and production of the documents which are sought for are necessary at that stage of the suit;*
 - (iv) The discovery and production is necessary for fairly disposing of the suit or for saving costs.*
 - (v) The discovery and production may be general or limited to certain classes of documents as the Court in its discretion deems fit and the production will only be ordered if the Court considers it just.”*

Relevant Case Laws in IP (Contd.)

- *“In the English Courts, the counsel for the parties agreed that production of the relevant material and documents was subject to a confidentiality agreement, a “confidential club” of certain persons if the same may be so called, because only the lawyers of the plaintiff and expert of the plaintiff were (who were subject to confidentiality agreement), allowed to look at such documents.... We may note that the Learned Single Judge has also directed production of documents in this regard only in a sealed cover. However, no purpose will be served merely by filing the same in the Court Learned Single Judge may not be equipped to compare and contrast the technical proprietary information relating to the two products and decide on his own whether the two products are the same.”*
- *“The Court will necessarily have to devise a detailed procedure before directing production of the documents in a sealed cover because, as already stated, filing of documents in the Court in a sealed cover will serve no purpose unless and until a further procedure is devised with respect to the comparison and analysis of the confidential information of both the parties and as to an issue of “confidentiality club” with its requirements including constitution, which is to be first decided by the Learned Single Judge.”*

Relevant Case Laws in IP (Contd.)

- ❖ ***Lt Foods Ltd. v. Sunstar Overseas Ltd. & Anr* [I.A. No.4331/2009 in CS (OS) No.612 of 2009]**
 - *“During the course of hearing of interim applications, the defendants have argued their case on the basis of same very documents which are prima facie forged and fabricated. It is seen that three times the opportunity was given to the defendants to produce and furnish the originals, first at the time, when the application for discovery of the documents was filed by the plaintiff, second, at the time of admission and denial of the documents and third, during the course of CS (OS) Nos.612/2009, 639/2009 & 653/2009 Page No.41 of 45 hearing of the interim applications by the court. Additionally, when Local Commissioner’s report was issued, the documents were called from therein, the defendant protested against the Local Commissioner’s report so that this court should not look the stand of the Local Commissioner about the correctness of those documents as to whether such documents bear the trade mark or not. Despite the opportunities and occasions from time to time to file originals so as to show the actual user of the marks on the invoices, no such documents were filed, except one affidavit and eventually the matter was heard. It appears that the defendant is either aware that there is no such evidence or the evidence available at this stage would operate to his detriment. Therefore, the defendant is doing all his endeavours to withhold such evidence despite such opportunities.”*

THANK YOU!

Questions?

Sunidhi Bansal, Associate

© ALG India Law Offices LLP, 2021.

Disclaimer: Views, opinions, and interpretations are solely those of the presenters, not of the firm (ALG India Law Offices LLP) nor reflective thereof.

This presentation hosted at: https://www.algindia.com/wp-content/uploads/2021/10/SLIS_Sunidhi-Bansal.pdf