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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CS(COMM) 567/2021 & CC(COMM) 2/2022, I.A. 2117/2023, I.A. 16442/2023, I.A. 16444/2023

NOVATEUR ELECTRICAL & DIGITAL SYSTEMS PVT LTD

.....Plaintiff

Through: Mr. Hemant Singh, Ms. Palak Batra,  
Mr. Akhil Saxena, Advocates  
(M:7982941551)

versus

V-GUARD INDUSTRIES LTD

.....Defendant

Through: Mr. Saikrishna Rajagopal, Mr. Nitin  
Sharma, Ms. Deepika Pokharia, Mr.  
Abhay Aren, Mr. Angad Makkar,  
Advocates (M:9897862900)

**CORAM:**

**HON'BLE MS. JUSTICE MINI PUSHKARNA**

**JUDGMENT**

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**03.02.2025**

**MINI PUSHKARNA, J:**

**I.A. 16444/2023 (Application on behalf of the defendant under Order XI Rule 1(10) read with Section 151 CPC)**

1. The present application has been filed by the defendant under Order XI Rule 1 (10) as amended by the Commercial Courts, Commercial Division and Commercial Appellate Divisions of High Court Act, 2015, read with Section 151 of the Code of Civil Procedure (“CPC”), 1908, for placing on record additional documents.

2. The facts, as relevant for adjudication of the present application, are as follows:



2.1 The present suit has been filed seeking permanent injunction restraining the defendant from using ‘MATTEO’ range of switch plates or any other obvious imitation, infringing the plaintiff’s registered design nos. 296178, 296179 and 296180 (“**plaintiff’s designs**”), along with reliefs of delivery up, rendition of accounts/damages, etc.

2.2 The defendant filed its written statement along with a Counter Claim, i.e. *CC No. 2/2022* on 8<sup>th</sup> December, 2021, seeking cancellation of the plaintiff’s designs, on the grounds of prior registrations by third parties, prior publication of plaintiff’s design by NIPA International Pvt. Ltd. and lack of novelty and originality of the plaintiff’s designs.

2.3 In the light of certain additional facts introduced by the plaintiff *vide* its replication and written statement to the defendant’s Counter Claim, the defendant filed an amended written statement.

2.4 Thereafter, the defendant filed an application under Order XI Rule 1(4) CPC dated 02<sup>nd</sup> March, 2022, to bring on record certain additional documents pertaining to ‘Concept 6’ design of the plaintiff, which was allowed by this Court *vide* Order dated 27<sup>th</sup> January, 2023.

2.5 Thereafter, the defendant herein filed another application under Order XI Rule 1(4) CPC seeking to place on record photographs of ‘Concept 6’ prototype and other documents related thereto. However, the said application was withdrawn by the defendant as recorded in Order dated 06<sup>th</sup> March, 2023, with liberty to produce the physical product before the Court.

2.6 The present application has been filed by the defendant to bring on record certain additional documents, on the premise that as a result of the ongoing inquiries by the defendant internally, the defendant has been able



to identify documents which show prior publication of the plaintiff's designs.

3. On behalf of the applicant/defendant, it is submitted as follows:

3.1 The documents sought to be placed on record were not in the defendant's, power, possession, control or custody when the defendant filed its written statement/amended written statement/ counter claim. The said documents were discovered only subsequently in view of the continuous inquiry conducted by the defendant as regards the design of the plaintiff.

3.2 The plaintiff did not disclose its foreign design registrations, which ought to have been disclosed by the plaintiff.

3.3 The plaintiff has failed to substantiate any objections, on merits, to the additional document sought to be placed on record. The defendant has conducted extensive inquiries and due diligence with respect to the hundreds of designs of the plaintiff, and after detailed scrutiny, has sought to place the present documents on record to show the suppression and non-novel nature of plaintiff's designs.

3.4 The plaintiff has concealed the registration of prior designs by its group entity, in order to avail design registration in favor of the plaintiff in India and claim monopoly. Therefore, mere delay on part of the defendant to bring on record the present documents cannot be a ground to enjoy monopoly in designs which are not novel.

4. Per contra, on behalf of the plaintiff, following submissions have been made:

4.1 The present application filed by the defendant to bring on record additional documents, is not maintainable, lacks *bonafide* and is an



afterthought. The same cannot be permitted to be taken on record as all the documents were in the public domain and were available for production along with the written statement.

4.2 The defendant had appeared on 12<sup>th</sup> November, 2021 and on various other occasions during the hearing of the interim injunction application of the plaintiff. Therefore, they had ample opportunity of more than a year to research, collate and produce material that they wished to rely upon, regarding the challenge to the suit designs.

4.3 The defendant has already placed on record four sets of additional documents from November, 2021 to January, 2023, therefore, the documents sought to be brought on record now were available and therefore, should have been brought on record with the written statement dated 18<sup>th</sup> December, 2021 or the amended written statement dated 02<sup>nd</sup> March, 2022.

4.4 The additional documents sought to be brought on record were already in power, possession, control and custody of the defendant at the time of filing the written statement. Moreover, no reasonable cause or explanation has been given by the defendant for the non-disclosure/filing of these documents at an earlier stage.

4.5 The contention that the plaintiff has concealed or suppressed any documents or material facts is false and misconceived, as there was no need for the plaintiff to place the alleged design registrations/catalogues/illustrations of switch cover of the plaintiff group entities, on record.

4.6 The design registrations/illustrations of switch cover plates of the plaintiff group, sought to be placed on record, are completely dissimilar



with that of the plaintiff's suit designs. Further, no cognizance can be taken of such documents produced at a later stage, after issuance of the interim injunction order to question the correctness of the injunction order.

5. I have heard learned counsels for the parties and perused the record.

6. The present suit pertains to the plaintiff's claims in its design for its switch plates, which as per the plaintiff, is a novel and original design, imparting a unique and substantially different, attractive, trendy, novel and original appearance to the plaintiff's switch plates. The present suit has been filed by the plaintiff against the defendant on the ground that its marketing team came across switch plates being manufactured by the defendant, which are close imitation of the plaintiff's switch plates.

7. This Court notes that the documents sought to be placed on record by the defendant by way of the present application, are as follows:

a. **Printouts from the WIPO Design Database**

(<https://www3.wipo.int/designdb/en/>) for the following foreign design registrations obtained by the plaintiff's sister concerns, in the LeGrand Group:

i. 000361340-0002 (publication date: 23.08.2005).

ii. 000361340-0001 (publication date: 15.11.2007).

iii. 001006035-0003 (publication date: 21.09.2010).

iv. 001182919-0002 (publication date: 08.12.2011).

v. 20132396-001 (publication date: 03.06.2016).

vi. 20132396-002 (publication date: 03.06.2016).

b. **Screenshots of the 'Living Light' switch plate of Bticino Spa**

(a Legrand Group company), from a publicly available catalogue dating back to 2014, along with screenshots from the Wayback Machine (Internet



archives), showing that the switch plate was first published, at least, as early as November, 2016.

c. **Printouts evincing prior design registrations** obtained by third-parties in India, viz. Design no. 246103, Design no. 216936 and Design no. 216937.

d. **Comparative Analysis report dated 16<sup>th</sup> August, 2023** issued by Mr. Vaibhav Kulshreshta, Proprietor of Shilpshala (Architecture Studio) certifying the comparison chart detailing the substantial similarities and/or identity between the plaintiff's designs and the other designs.

e. **Photographs evincing prior publication of plaintiff's designs** 'in a tangible form' by plaintiff's group company LeGrand, i.e., Mylinc switch plate (bearing Model No.6755 61 & 6755 66), along with a copy of LeGrand Mylinc Brochure dated 16<sup>th</sup> March, 2017.

f. **Photographs evincing prior publication of plaintiff's designs** 'in a tangible form' by third-parties, i.e.,:

i. Elley's E-Square switch plate, along with social media posts (dating back as early as January, 2016).

ii. Wipro's Venia switch plate, along with a catalogue published by Wipro, which, as per Wayback Machine, dates back, at least, as early as December, 2016.

g. **Affidavit of the defendant's representative** capturing the details of the existing stock of the defendant's products bearing the defendant's design, and verifying the approximate value thereof (i.e., INR 1.17 Crores), as handed over by the defendant/appellant during the proceedings in *V Guard Industries Limited v. Novateur Electrical and Digital Systems Private Limited* [FAO(OS) (Comm) 14 of 2023].



8. By referring to the aforesaid documents, it is the case of the defendant that the features in which the plaintiff claims novelty vis-à-vis the plaintiff's designs and third-party designs, are incorporated in, and have been prior published by way of the aforesaid designs stated to have bearing on the subject matter of the present suit. Further, the additional documents also include a comparative analysis report, and an affidavit of the defendant's representative pertaining to stock statement *qua* the available stocks of 'MATTEO' branded switch plates, as filed before the Division Bench in *FAO(OS) (COMM) 14/2023*, which documents came into being subsequently.

9. It is further the case of the defendant that the additional documents sought to be brought on record by the defendant are purportedly foreign registrations of prior designs by the group company of the plaintiff, of which the plaintiff is a subsidiary. Other documents pertain to the photographs with regard to the prior publication of plaintiff's designs by the plaintiff's group company, Legrand and photographs with regard to prior publication of plaintiff's designs by third parties.

10. Perusal of the plaint shows that it is the submission of the plaintiff that it is a subsidiary of Legrand S.A., a company incorporated under the laws of France and principally engaged in the manufacturing of all types of fuse gears, switch gears, control gears, all kinds of electrical goods, light engineering goods, etc. The submission made in the plaint in this regard, is reproduced as under:

"xxx xxx xxx

**3. The Plaintiff is the subsidiary of Legrand S.A., a company incorporated under the laws of France having address at 128, Avenue Du Marechal, De Lattre-De-Tassigny, 87000 Limoges, France**



*and is principally engaged in the manufacturing of all types of fuse gears, switchgears, control gears. High Rupture Capacity (HRC) fuses, Miniature Circuit Breakers (MCBs) and all kinds of electrical goods, light engineering goods, allied goods and also acts as import and export merchant and trader dealing in all kinds of electrical and light engineering goods, including under the brand LEGRAND.....*

*4. **The Plaintiff belongs to the Legrand Group** which offers a wide range of over 3,00,000 product lines and solutions which are subdivided into 18 major product categories, including controlling electrical installations, power supply, protection of electrical installations, temperature regulation, cabling, alarm systems etc. The Plaintiff has placed on record a download from the Legrand Group's official website page showing the entire range of product categories of the Legrand Group.*

*xxx xxx xxx”*

*(Emphasis Supplied)*

11. The aforesaid documents are stated to have been discovered by the defendant subsequently, during the course of the extensive internal inquiry conducted by the defendant. Perusal of the aforesaid documents, indeed show, that the same pertain to the design registrations of the group company of the plaintiff as well as design claimed by the plaintiff. Further, the comparative analysis report dated 16<sup>th</sup> August, 2023, came into existence subsequently, after filing of counter claim by the defendant in 2021 and the amended written statement in 2022.

12. Order XI Rule 1(10) of CPC, as amended by the Commercial Courts Act, 2015, stipulates that a defendant shall not be allowed to rely on documents which were in the defendant's power, possession, control or custody, and not disclosed along with the written statement or counter claim, except with leave of the court, upon the defendant establishing reasonable cause for non-disclosure. However, the rigor of establishing a reasonable cause for non-disclosure along with the written statement/



amended written statement/ counter claim, may not arise, where the additional documents sought to be brought on record, are discovered subsequent to the filing of the plaint.

13. Thus, in a case where the plaintiff sought to place on record documents which were discovered subsequent to filing of the plaint, Supreme Court in the case of *Sudhir Kumar Alias S. Baliyan Versus Vinay Kumar G. B., (2021) 13 SCC 71*, has held as follows:

“xxx xxx xxx

*9.5. Order 11 Rule 1(5) further provides that the plaintiff shall not be allowed to rely on documents, which were in the 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 court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint. Therefore on combined reading of Order 11 Rule 1(4) read with Order 11 Rule 1(5), it emerges that (i) in case of urgent filings the plaintiff may seek leave to rely on additional documents; (ii) within thirty days of filing of the suit; (iii) making out a reasonable cause for non-disclosure along with plaint.*

*9.6. Therefore a further thirty days' time is provided to the plaintiff to place on record or file such additional documents in court and a declaration on oath is required to be filed by the plaintiff as was required as per Order 11 Rule 1(3) if for any reasonable cause for non-disclosure along with the plaint, the documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint. Therefore the plaintiff has to satisfy and establish a reasonable cause for non-disclosure along with plaint. **However, at the same time, the requirement of establishing the reasonable cause for non-disclosure of the documents along with the plaint shall not be applicable if it is averred and it is the case of the plaintiff that those documents have been found subsequently and in fact were not in the plaintiff's power, possession, control or custody at the time when the plaint was filed.** Therefore Order 11 Rule 1(4) and Order 11 Rule 1(5) applicable to the commercial suit shall be applicable only with respect to the documents which were in plaintiff's power, possession, control or custody and not disclosed along with plaint. **Therefore, the rigour of establishing the reasonable cause in non-***



**disclosure along with plaint may not arise in the case where the additional documents sought to be produced/relied upon are discovered subsequent to the filing of the plaint.**

xxx xxx xxx”

*(Emphasis Supplied)*

14. Thus, it is manifest that the Supreme Court in the aforesaid case, has laid down that the requirement of establishing the reasonable cause for non-disclosure of the documents along with the plaint, shall not be applicable if the said documents have been discovered subsequently. Similarly, in the present case, wherein, it is the case of the defendant that the documents sought to be placed on record have been discovered subsequently, the rigor of establishing the reasonable cause in non-disclosure along with the counter-claim/ written statement/ amended written statement, may not arise.

15. The documents sought to be placed on record by the defendant, are the documents, which were discovered by the defendant subsequently. Therefore, there is no impediment in taking the said documents on record.

16. Further, the defendant seeks to bring on record the comparative analysis report dated 16<sup>th</sup> August, 2023, which also came into existence subsequently, after the filing of counter claim by the defendant in 2021 and the amended written statement in 2022. Therefore, there is no impediment in taking the said document on record, as well.

17. Further, the defendant seeks to place on record, an affidavit of the defendant's representative pertaining to stock statement *qua* the available stocks of 'MATTEO' branded switch plates, as filed before the Division Bench in *FAO(OS) (COMM) 14/2023*. The said document, already forming



part of the court record before the learned Division Bench, is allowed to be taken on record.

18. This Court also notes that defendant has raised a challenge to the validity of the plaintiff's subject design registrations in its written statement as well as amended written statement. As such, the additional documents are not contrary to the pleadings and no new case is being set up by the defendant through the said additional documents. It is further to be noted that issues have not been framed in the matter and the trial is yet to begin.

19. Allowing the additional documents to be taken on record by noting that the suit was still at a nascent stage and the documents sought to be placed on record did not set up a new case, a Division Bench of this Court in the case of *Agva Healthcare Private Limited and Others Versus Agfa-Gevaert NV and Another*, 2023 SCC OnLine Del 7914, has held as follows:

“xxx xxx xxx

**17. We may also note that the present application had been filed when the suit is still at an initial stage and the issues are yet to be framed. The plea of the appellants that along with the plaint, the plaintiffs had filed appropriate declaration that all documents in power, possession, control or custody of the plaintiffs has been disclosed etc. is misplaced. By placing on record the documents, the respondents are neither setting up a new case nor withdrawing any admission. By virtue of the additional documents, plaintiffs are not setting up a case contrary to what has been pleaded in the plaint.**

xxx xxx xxx”

(Emphasis Supplied)

20. Furthermore, the relevancy of the said documents are not to be adjudicated by this Court presently, as the said issue shall be considered at the time of final hearing post trial in the present suit. It is a well settled legal principle that the authenticity, admissibility or relevancy of the



additional documents is required to be adjudicated only at the stage of final arguments and not at a prior stage. Thus, Supreme Court in the case of ***K. Mallesh Versus K. Narender and Others, 2015 SCC OnLine SC 1184***, has held as follows:

“xxx xxx xxx

2. *In our opinion the High Court should not have interfered at the stage when the trial was still in progress. Therefore, we set aside the impugned order [K. Narender v. K. Mallesh, CMA No. 1179 of 2005, order dated 31-12-2007 (AP)] passed by the High Court without going into the merits of the case. We say that the admissibility, reliability and registrability of the documents shall be considered independently only at the time of hearing of the trial and not prior thereto. All questions with regard to the aforesaid issues shall remain open.*

xxx xxx xxx”

*(Emphasis Supplied)*

21. The contention made by the plaintiff that the said documents were in public domain, and thus, would be considered to be in the knowledge of the defendant, cannot be accepted. Merely because the documents were available in the public domain, cannot be construed to mean that the said documents were in power, possession, control or custody of the defendant. *(See: Sun Pharmaceutical Industries Limited and Other Versus State Bank of India and Other, 2024 SCC OnLine Cal 4046, Para 13)*

22. Reliance by the plaintiff upon the judgment in the case of ***Eicore Technologies Pvt. Ltd. and Others Versus Eexpedise Technologies Pvt. Ltd. and Others, 2024 SCC OnLine Del 7536***, is completely misplaced. In the said case, no sufficient cause had been shown for non-disclosure of the documents along with the plaint. The plea taken by the plaintiffs in the said case with regard to oversight and error by the earlier counsel, was rejected.



The said case is distinguishable and does not apply to the facts and circumstances of the present case.

23. Again, reliance by the plaintiff on the judgment in the case of *T.T.K. Prestige Limited Versus Baghla Sanitaryware Private Limited and Others, 2024 SCC OnLine Del 882*, is misplaced. In the said case, the plaintiff therein sought to place on record additional documents, which were already in their record and were subsequently extricated from their own record. In the said circumstances, the court did not take the additional documents of the plaintiff therein, on record. However, in the present case, the additional documents sought to be placed on record by the defendants do not pertain to the defendants, but to the sister concerns of the plaintiff, which have been discovered subsequently by the defendants. Therefore, the aforesaid case relied upon by the plaintiff, is clearly distinguishable and not applicable to the facts and circumstances of the present case.

24. Considering the aforesaid detailed discussion, the present application is allowed. The additional documents filed along with the present application, are taken on record.

25. However, in the facts and circumstances of the present case, costs of Rs. 50,000/- is imposed upon the defendants, to be payable to the plaintiff, within a period of four weeks.

26. The present application is accordingly disposed of, in the aforesaid terms.

**(MINI PUSHKARNA)  
JUDGE**

**FEBRUARY 3, 2025/au**