IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

CHAMBER SUMMONS NO. 1085 OF 2019
IN
COMMERCIAL IP SUIT NO. 18 OF 1996

Colgate-Palmolive Company & Anr. ...Applicants/ Plaintiffs

Versus

Anchor Health and Beauty Care Private Limited ...Respondent/ Defendant

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Mr. Rashmin Khandekar *a/w. Mr. Anand Mohan i/b. Crawford Bayley & Co., for the Plaintiffs/Applicants.*

Mr. Dinesh Purandare, *Senior Advocate, a/w. Ms. Sheeja John, i/b. M. P. Savla & Co., for the Defendant/Respondent.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE: OCTOBER 9, 2026.

JUDGEMENT :

Context and Factual Background:

1. Chamber Summons No. 1085 of 2019 ("***Interim Application***"), which was taken out as long ago as August 26, 2019, as Chamber Summons (L) No. 1126 of 2019, in Commercial IP Suit No. 18 of 1996 ("***Suit***") has been finally heard today, seeking to bring on record documents evidencing the renewal of

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the trade mark registrations asserted in the Suit. For the reasons set out below, the Interim Application is allowed.

2. The Applicants-Plaintiffs who have filed the Interim Application are Colgate-Palmolive Company, a corporation incorporated under the laws of the State of Delaware, United States of America ("***Colgate US***"), and Colgate-Palmolive (India) Limited ("***Colgate India***") – collectively, "***Colgate***". The Respondent-Defendant resisting the Interim Application is Anchor Health and Beauty Care Private Limited ("***Anchor***").

3. The Suit was instituted by way of a Plaint dated October 29, 1996. The reliefs sought are a permanent injunction restraining infringement of registered Trade Marks asserted by Colgate US, a permanent injunction against passing off, and damages. For the purposes of the Interim Application, it is not necessary to state more about the Suit.

4. A Notice of Motion for interim reliefs was rejected on October 5, 1998. Appeal No. 84 of 1999 filed by Colgate against such rejection was dismissed on October 15, 2004. Colgate was not permitted to rely upon additional documents in the Appeal.

5. By the Interim Application, Colgate seeks to mark into evidence, six renewed Legal Proceedings Certificates ("***LPCs***") issued by the Trade Marks

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Registry. These LPCs pertain to Trade Mark registrations bearing distinctive registration numbers that are already part of the record. Anchor has opposed the entry of the LPCs evidencing renewals into evidence. Therefore, the Court Commissioner recording evidence has simply marked them as "*Article Y-1*" to "*Article Y-6*" for identification, to be marked into evidence only subject to the decision of this Court.

6. Particulars of the six LPCs may be summarised thus:

Article	Trade Mark No.	Renewed LPC date and where annexed in the Interim Application	Deposed to in PW-1's Affidavit in Support of the Chamber Summons	Document in respect of the same registration already on record
Y-1	190279	July 3, 2019 [Exhibit C, pages 33 to 35]	Paragraph 6	Exhibit P-33 (LPC dated February 25, 2013)
Y-2	476216	July 3, 2019 [Exhibit D, pages 36 to 37]	Paragraph 9	Article X-14 for identification (LPC dated November 24, 2006)
Y-3	167064	July 3, 2019 [Exhibit E, pages 38 to 39]	Paragraph 10	Exhibit P-49 (registration certificate dated October 19, 1955 with renewal letter dated December 16, 2013)
Y-4	319139	July 3, 2019 [Exhibit F, pages 40 to 42]	Paragraph 11	Exhibit P-40 (LPC dated February 25, 2013)
Y-5	319140	July 3, 2019 [Exhibit G, pages 43 to 44]	Paragraph 12	Exhibit P-41 (LPC dated February 25, 2013)
Y-6	86932	July 2, 2019 [Exhibit H, pages 45 to 47]	Paragraphs 13	Exhibit P-36 (LPC dated May 17, 2013)

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7. The affidavit of PW-1 in support of the Interim Application, affirmed on August 26, 2019, seeks that Articles Y-1 to Y-6 be marked into evidence as Exhibits P-50 to P-55 respectively. The prayers in the Interim Application read as under:

> *(a) that, this Hon'ble Court* ***be pleased to take on record the renewed Legal Proceeding Certificate in respect of the renewed registered trademark bearing nos. 190279 dated 3rd July 2019, 476216 dated 3rd July 2019, 167064 dated 3rd July 2019, 319139 dated 3rd July 2019, 319140 dated 3rd July 2019 and 86932 dated 2nd July, 2019 and mark the same in evidence****;*
>
> *(b) that, the costs of this Chamber Summons be provided for; and*
>
> *(c) for such further and other reliefs as the nature and circumstances of the case may require and which this Hon'ble Court may deem fit and proper.*
>
> ***[Emphasis Supplied]***

8. A brief outline in the journey of evidence in the Suit is appropriate. Between 2008 and 2018, Colgate filed three affidavits of documents and compilations of documents – a Compilation of Documents ("***COD***") with affidavit of Mr. Sanjeev K. Shrivastav dated September 26, 2008; a Supplementary Compilation of Documents ("***SCOD***") with affidavit of Mr. Saikat Mukherjee dated June 22, 2013; and an Additional Compilation of Documents ("***ACOD***") with affidavit of examination-in-chief of Mr. Sandesh Kasabe dated March 12, 2018.

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9. On June 6, 2019, Colgate stated that it would not rely upon the evidence affidavits of the first two witnesses, with Anchor reserving the liberty to use them to confront Colgate's witnesses. Colgate's list of witnesses was filed on June 10, 2019. By an order dated July 10, 2019, the affidavit in lieu of examination-in-chief of Mr. Sandesh Kasabe ("**PW-1**") was taken on record by a Learned Single Judge, and marked Exhibit P1/1; the documents in the COD, the SCOD and the ACOD were marked, some as exhibits subject to proof of truth of contents, and others as articles for identification. This date, i.e. July 10, 2019, would come to bear significance for the Interim Application.

10. A Learned Court Commissioner was appointed to record evidence, with an endeavour to complete the evidence and cross-examination of PW-1 by August 31, 2019. The six LPCs with which the Interim Application is concerned had been issued by the Trade Marks Registry on July 2, 2019 and July 3, 2019, that is, before July 10, 2019, when the affidavit of evidence of PW-1 and various documents were marked into evidence. The documents marked did not include the renewed LPCs but included their earlier versions, which had been the valid registrations when the COD, SCOD and ACOD were filed. Colgate could have pointed out to the Learned Single Judge on July 10, 2019 that the new LPCs had been issued and sought to substitute the earlier versions, but it did not do so.

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11. On August 7, 2019, in the course of the further examination-in-chief of PW-1 before the Commissioner (Questions and Answers 3 to 9), PW-1 tendered the new LPCs and sought to bring them on record. Anchor objected. The Commissioner recorded the rival contentions, marked the documents as Articles "Y-1" to "Y-6" for identification and made their admission into evidence "*subject to the decision of the Hon'ble Court*". The examination-in-chief was completed on this basis. The cross-examination of PW-1 commenced on the same day.

12. The Interim Application was taken out on August 26, 2019. By an order dated August 28, 2019, this Court directed that the cross examination was to continue only after the disposal of the Interim Application. It has since remained pending for seven years.

13. Anchor filed its affidavit in reply on August 29, 2019. On August 30, 2019, Anchor sought inspection of the relevant files and registers of the Trade Marks Registry on the footing that the documents furnished by Colgate were incomplete – it was pointed out that Article Y-1 records that the mark is limited to the colours red and white as shown in the representation annexed thereto, although neither was there any annexure nor was the certificate itself in colours (it was in black and white).

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14. Inspection was permitted by an order of even date and the Trade Marks Registry was directed to give inspection on September 4, 2019 of all registers regarding the certificates relied upon by Colgate. Inspection was taken at the Trade Marks Registry, Mumbai on September 4, 2019. Physical files relating to Trade Mark Nos. 190279, 319139 and 319140 were made available. The original file of Trade Mark No. 190279 was stated to be missing and a reconstructed file was made available. The files relating to Trade Mark Nos. 476216, 167064 and 86932 were not available for physical inspection.

15. Inspection of the file relating to Trade Mark No. 86932 was thereafter taken at the Trade Marks Registry, Kolkata on September 16, 2019, where too the physical file was found to be untraceable. This position was reconfirmed by Anchor's advocates by their letter dated November 1, 2019.

16. Anchor filed an additional affidavit dated January 30, 2025, contending that upon inspection, the original records pertaining to the renewed LPCs were not traceable and that the records available with the Registry were reconstructed on the basis of documents provided by none other than Colgate, and therefore unreliable. Colgate filed an affidavit in rejoinder on April 16, 2025, contending that the records of the Trade Marks Registry had been reconstructed pursuant to an official notice issued by the Registry in compliance with the procedure adopted by the Registry for reconstruction.

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Colgate relied on the disclosure made by the Registry in other proceedings, that 44,404 trade mark files were missing, and that a public notice dated April 25, 2011 had been issued by the Controller General of Patents, Designs and Trade Marks in this regard. Therefore, it was contended that there was nothing peculiar or special about Colgate's files, and the loss of files at the Registry cannot be held to cause detriment to Colgate.

17. During the long pendency of the Interim Application, two registrations, namely Nos. 167064 and 319139 expired (Articles Y-3 and Y-4) and renewed LPCs were applied for and obtained on February 19, 2025. These have been placed on record at Exhibit "B" and Exhibit "C" to the affidavit in rejoinder (Pages 271 to 274).

Contentions of Parties:

18. Against this backdrop, I have heard the Learned Advocates for the parties, and with their assistance, I have examined the record.

19. Mr. Rashmin Khandekar, Learned Advocate on behalf of Colgate would make the following submissions in support of the Interim Application:

A] The renewed LPCs are not fresh evidence and are merely updated documents, evidencing nothing more than that the ministerial act of

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renewal of registrations already marked into evidence. The registrations are deposed to in the affidavit of evidence, and documents in respect of each of them (including the earlier LPCs) already stand on the record;

B] The Suit dates back to 1996. The renewals fell due during its pendency and took place after the affidavit of evidence was filed in 2018, and indeed before the examination-in-chief on July 10, 2019. Due to miscommunication, they were not tendered on that day. However, they were tendered within a month, on August 7, 2019. Sufficient cause is made out and no prejudice would be occasioned either to the proceedings or to Anchor by their inclusion;

C] The commencement of cross-examination of PW-1 is irrelevant because the documents were marked for identification by the Commissioner expressly "subject to the decision of the Hon'ble Court", and the further examination-in-chief was noted as complete on that basis. In any event, by the order dated August 28, 2019, the cross-examination was directed to continue only after disposal of the Interim Application, so that Anchor would have a full opportunity to cross-examine PW-1 on these documents;

D] The questions put to PW-1 in further examination-in-chief (Questions and Answers 3 to 9) lay the foundation for the LPCs. Even the Written Statement filed by Anchor (Paragraphs 2, 2.1 and 2.2)

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contests only what rights flow to Colgate by virtue of the registrations;

E] The objection founded on the non-availability of original records with the Trade Marks Registry is answered by the Registry's own conduct. The records of the Registry had to be reconstructed not just for Colgate's files but for 44,404 files in compliance with due process adopted by the Registry. Colgate cannot be prejudiced by the state of the Registry's records;

F] Marking a document in evidence is not the same as proof of its contents or of its truth. Anchor's objections go to the weight and probative value of the documents and to the merits of the registrations, all of which can be tested in cross-examination and canvassed at the trial. They are not reasons to shut out the LPCs altogether; and

G] Anchor's objections are technical and pedantic. The law, the equities and the interest of justice require that the LPCs be taken on record and marked in evidence for a full and effectual adjudication of the issues raised in the Suit.

20. Mr. Dinesh Purandare, Learned Senior Advocate on behalf of Anchor would oppose the Interim Application with the following contentions:

A] Colgate is not entitled to lead fresh evidence at this belated stage. Between 2008 and 2018 Colgate filed three affidavits of documents,

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three compilations of documents and three affidavits in lieu of examination-in-chief, and on none of those occasions did it produce admissible documentary evidence to establish the registrations asserted;

B] The LPCs were ready before July 10, 2019, and yet, neither Colgate nor its attorneys informed the Court on that day that fresh LPCs had been applied for or were available. No plea of "inadvertence", "innocent error" and "oversight" are made out and no sufficient cause has been shown;

C] The procedure adopted to bring the LPCs on record is not one known to law. Neither the Code of Civil Procedure, 1908 nor the Indian Evidence Act, 1872 contemplates the marking of documents after the commencement of cross-examination. The approach inverts the burden of proof because the correct course was to seek leave, disclose the documents, offer inspection, and then produce them in the course of examination-in-chief. Anchor's valuable right of inspection and of admission and denial, to be exercised before recording the examination-in-chief, has been denied to it;

D] None of the LPCs at Article Y-1 and Y-3 to Y-6 conforms to the corresponding Exhibits while Article Y-2 does not conform to Article X-14 that had been marked for purposes of identification. Therefore, the characterisation of these documents as mere renewals is questionable;

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E] The LPCs are, in any event, irrelevant. The Suit alleges infringement only of the marks bearing registration Nos. 190279 and 319139, and application No. 476216, as and when registered. No case is pleaded and no relief is claimed in respect of Trade Mark Nos. 167064 and 86932. Therefore, documents pertaining to those marks cannot form part of the evidence in this Suit;

F] The authenticity of the certificates is also not established. On inspection, the original file of Trade Mark No. 190279 was found missing and only a reconstituted file was available, and the files relating to Trade Mark Nos. 476216, 167064 and 86932 were not traceable at the Mumbai or Kolkata offices of the Registry. The material available with the Registry consists of reconstituted self-attested record supplied by none other than Colgate. Such certificates must not be entered into evidence; and

G] Colgate's conduct has been dubious. In proceedings before the Delhi High Court in respect of Trade Mark No. 1223059, the certified copy produced by Colgate was found on inspection not to accord with the original. Pursuant to an order dated February 9, 2009 in Writ Petition (Civil) No. 4165-66 of 2006 Colgate agreed to surrender the said certificate of registration and obtain a fresh one, and then took a stand by a letter dated June 1, 2009 that the original had been lost or

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misplaced before it could be surrendered; and

H] In Appeal No. 84 of 1999, Colgate was not permitted to rely upon additional documents. Allowing the LPCs would vitiate that position.

Analysis and Findings:

21. Time has stood still in this matter. Indeed, Colgate did not get interim relief in the Suit and the stage for filing of evidence has passed. However, what is sought to be brought into evidence is not something new but LPCs that evidence the very same registrations already forming part of the record. Indeed, when the earlier documents were marked into evidence on July 10, 2019, the new LPCs had already been issued and were within Colgate's power. They ought to have been highlighted to the Court on that day. Yet, it is also true that the documents on record had been brought on record well before the LPCs came into existence.

22. What is apparent is that Colgate through its attorneys, routinely and mechanically participated in the evidence-marking exercise and sought to bring the updated LPCs on the record only when the Commissioner was recording evidence. However, in my opinion, these facts are not at all fatal to the entry of the six LPCs into the record for being marked as evidence. At the heart of my approach to this peculiar situation, which has led to this disproportionate and inordinate seven-year delay in the conduct of the Suit, is

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to examine whether the LPCs are relevant. The contention is that only three registrations are pleaded as the basis of the cause of action but six LPCs are sought to be introduced.

23. Therefore, one must examine the issues framed in the Suit. The very first issue bears reference to the registrations of which Article Y-1 to Y-5 are but subsequent renewals. There are four other issues that bear varying reference to these registrations in varying combinations. Purely for brevity, just the very first issue is reproduced below:

> *1. **Whether** the Plaintiffs prove that **the registrations of the trade marks bearing Nos. 167064,190279, 319139, 319140 and 476216 are valid** and subsisting as on date?*
>
> ***[Emphasis Supplied]***

24. A plain reading of the foregoing, on the touchstone of relevance, would indicate that the validity of five of the six registrations covered by the LPCs is clearly in issue. To my mind, barring trade mark bearing registration no. 86932, all the other trade mark registrations having been specifically referred to in the very first issue and that too their validity being the point in issue, the case of their irrelevance stands undermined. Even the trade mark bearing registration no. 86932 has been marked into evidence as Exhibit P-36. Therefore, to bring on record the LPCs that currently evidence the renewed underlying registrations is a reasonable request. The LPCs and their

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underlying registrations cannot be regarded as irrelevant. The contention that the Suit has to adjudicate the validity of the registrations as of the date of the Suit and therefore the renewal certificates are not relevant need not detain me further – the renewal is a subsequent development and its relevance can be subjected to trial. Indeed, Colgate could have tabled the six new LPCs on July 10, 2019, in which case there would have been no hurdle to their induction into the record. I see no reasonable basis to deal with the peculiar situation on hand any differently. The interests of justice would be served by allowing the captioned Interim Application and not by denying it.

25. This is a 30-year-old Suit. It has remained frozen since 2019 on account of the opposition to the Interim Application necessitating adjudication before the next step can even be taken in the proceedings. Indeed, Anchor has raised serious issues about the integrity of the Register and the fact that reconstituted records are but those provided by Colgate itself. To my mind, this is a submission on the merits as to the probative value of the evidence sought to be relied on by Colgate. The merits of such contentions would not stand eroded by introduction of the LPCs as evidence. Anchor's contentions on the probative value would be dealt with in the trial. In any case, under Section 31 of the Trade Marks Act, 1999 ("***TM Act***"), the original registration and subsequent assignments and transmissions constitute *prima facie* evidence of their validity. Likewise, under Section 137 of the TM Act, a copy of any entry

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in the register purporting to be certified by the Registrar and sealed with the seal of the Trade Marks Registry shall be admitted into evidence in all Courts and in all proceedings without further proof or production of the original.

26. Anchor may have a point about whether the presumption of integrity of the register would be undermined by reason of the records certified by the Registry being the records certified by Colgate in the course of reconstruction. The contention is that Colgate is itself certifying what Colgate seeks to rely on as records of the Registry. However, this contention cuts to the probative value of the registrations that are already on record and as such does not get undermined by the induction of the six LPCs evidencing further renewals. The position in law and the issue of validity that has to be tried and adjudicated does not change on the basis of the expiry of the earlier registrations that are already on record, and the introduction of the renewed LPCs issued upon their renewal.

27. The LPCs sought to be introduced now are but renewals of existing registrations that are already part of the record. It is only logical that they be allowed into evidence. This extraordinary and inordinate saga of the Suit not progressing since 2019 is rooted in Colgate not having produced Article Y-1 to Y-6 on July 10, 2019 when it had it on hand but mechanically marked the earlier LPCs annexed to the affidavit of examination-in-chief of PW-1.

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However, considering the nature of the instruments sought to be brought on record – specifically renewal certificates of registrations already exhibited and marked, in my view, the interests of justice would be served by allowing the captioned Interim Application and not by rejecting it.

28. It is made clear that nothing in this Order is an expression of an opinion on the probative value of these exhibits. Anchor's contentions about the absence of integrity in the maintenance of the Registry, and about the probative value of these six LPCs and of the two further renewals that form part of the rejoinder, remain open. The infirmities sought to be tried both in substance and in terms of weight (for example, black and white images being relied upon in pursuit of a claim to intellectual property in the colour combination of red and white) will remain available to Anchor in the course of the trial. The introduction of LPCs evidencing renewal of registration in July 2019 would not undermine Anchor's ability to pursue these contentions during trial.

29. I also do not agree that allowing the renewal LPCs to come on record would invert the burden of proof as contended on Anchor's behalf. As stated above, the *prima facie* evidence is a matter of statutory dispensation under Section 31 and Section 137 of the TM Act. If adequate cloud is cast over the original registration, the *prima facie* evidence would stand displaced by trial.

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Moreover, the burden of proof is meant to run its ordinary course in respect of the evidence that is already on record. Article Y-1 and Articles Y-3 to Y-6 are merely renewal certificates of registrations already marked into evidence. Article Y-2 was an application for registration when the Plaint was filed and relates to Article X-14 and not an Exhibit. Even so, Article Y-2 too deserves to be introduced into the record.

30. The contention that the precious process of inspection before examination in chief having been lost does not appeal to me. The six LPCs are only renewals of existing Exhibits and any inspection that had been done or not done before the existing Exhibits were marked would not be changed at this stage. Moreover, the substantive exercise of inspection of records has taken place in course of conduct of the Interim Application only in 2019, in a suit instituted in 1996. The findings and contentions based on the inspection remain available to Anchor for trial.

31. At the end of the day, one must remember that procedural provisions are meant to be in aid of substantive justice. All that is sought to be brought on record are the latest valid registration certificates. It could well be contended that in the absence of evidence that the registrations are alive, a Suit founded on those registrations would be rendered infructuous. Therefore, it is only relevant to deal with the evidence to show that the registrations as

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claimed have been kept renewed, leaving the *prima facie* validity of the original registration to be subjected to trial. Therefore, letting Articles Y-1 to Y-6 into evidence, and indeed the further renewals of the registrations covered by Articles Y-3 and Y-4, without undermining Anchor's ability to undermine the probative value of the registrations in the trial of the issues as framed, to my mind, is wholly appropriate.

32. To summarise, the evidence sought to be introduced is not of some completely new fact but of the mere renewal of six registrations, which are already part of the record. Therefore, it is not right to contend that fresh evidence is being led at a belated stage and after cross-examination has commenced. There is no inversion of the burden of proof at all. Such an opposition is disingenuous. Colgate has paid a disproportionate price for its attorneys' failure to have tabled the six LPCs on July 10, 2019. The probative value of the six LPCs and the two further LPCs in the renewal of Articles Y-3 and Y-4 is not undermined by letting them into the record. The authenticity of the registration and the impact of the Registrar's record being reconstituted from Colgate's record would find its appropriate weight in the course of trial of the Suit.

33. The alleged dubious conduct in other proceedings too would not have a bearing on the limited question of whether to allow the captioned Interim

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Application. The probative value of Colgate's alleged conduct in proceedings before the Delhi High Court is to be dealt with on the basis of pleadings and proof of such allegations. Likewise, the disallowance of further evidence in Appeal No. 84 of 1999 does not stand undermined by the captioned Interim Application being allowed because the six LPC are merely renewals of what is already on record and not of any fresh evidence outside the registrations that are in issue and are covered by the material on record.

34. It is also noteworthy that the cross-examination of PW-1 remains incomplete and has not progressed since August 7, 2019 in view of the pendency of the Interim Application. Anchor will indeed have the full opportunity to cross-examine Colgate's witness on these LPCs.

35. At this stage, without pronouncing on Anchor's contentions on the merits of the matter, I must also note that it is not just Colgate's files in the registry but a total of 44,404 cases where reconstruction had to be effected. Any avenue to challenge any failure of due process in conducting the reconstruction adopted by the Registry was always available to Anchor. Therefore, in the conduct of this Suit, I find nothing peculiar or perverse of a nature that cuts to the root of the ability to let the LPCs into the record.

36. Therefore, the LPCs not strictly constituting "fresh evidence" and the stage not really being a "belated stage" in the peculiar facts of the case, in my

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view, the case to allow the captioned Interim Application is made out. Indeed, Colgate has brought this situation upon itself by not having been alert to the renewals that had already taken place but that lapse is not of such a magnitude that the LPCs evidencing renewal of registrations already marked into evidence should be shut out.

***Full Bench in* Ghia:**

37. Before parting with the matter, it is considered appropriate to deal with Mr. Purandare's reliance on a decision by a Full Bench of this Court in ***Ghia***[1] on the due process to be followed for dealing with the situation like the matter in hand. The Full Bench was constituted to resolve two conflicting lines of precedent – one holding that it is necessary for the Court to decide the admissibility of documents before they are exhibited in evidence, and the other holding that admissibility and proof of a document should be reserved until judgement in the case is given. The questions, as reframed by the Full Bench, were:[2]

> *Question-A.* ***At which stage, the objection to the admissibility and/or proof of document*** *which may be produced or tendered* ***should be raised, considered and decided*** *by the Court?*
>
> *Question-B.* ***At which stage an objection to the admissibility or relevancy of evidence***

1 *Hemendra Rasiklal Ghia vs. Subodh Mody –* ***2008 (6) Mh.L.J. 886*** *–* ***2008 SCC OnLine Bom 1017*** *("****Ghia****").*
2 ***Ghia****, Paragraph 41.*

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contained in the affidavit *filed under Order XVIII, Rule 4 of Civil Procedure Code* ***should be considered and decided by the Court****?*

[Emphasis Supplied]

38. The Full Bench answered these questions in Paragraph 92 as under:[3]

> *92. As already noticed,* ***(i) objection to the document sought to be produced relating to the deficiency of stamp duty must be taken when the document is tendered in evidence and such objection must be judicially determined before it is marked as exhibit;***
>
> *(ii)* ***Objection relating to the proof of document of which admissibility is not in dispute must be taken and judicially determined when it is marked as exhibit****;*
>
> *(iii)* ***Objection to the document which in itself is inadmissible in evidence can be admitted at any stage of the suit reserving decision on question until final judgment in the case.***
>
> *The Court trying the suit or proceedings* ***as far as possible is expected to decide the admissibility or proof of document as indicated hereinabove****. As we have already added a word caution that* ***while exercising discretion judiciously for the advancement of the cause of justice for the reasons to be recorded, the Court can always work out its own modality depending upon the peculiar facts of each case without causing prejudice to the rights of the parties to meet the ends of justice*** *and not to give the handle to either of the parties to protract litigation.* ***The aim should always be to prevent miscarriage of justice and expedite trial, which is the dire need of the time.***
>
> ***[Emphasis Supplied]***

39. Ghia has classified objections to documentary evidence into three categories before setting out the answer extracted above. The objection relating to Stamp Duty is not relevant here. The second is an objection not

3 ***Ghia****, Paragraph 92.*

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directed to the admissibility of the document in evidence but to the mode of proof, alleged to be irregular or insufficient. Anchor's objection that the authenticity of the certificates is not established – the original files of the Registry being untraceable and the reconstituted records emanating from Colgate itself – is, in substance, an objection of this class. It must therefore be taken and judicially determined when the document is marked. That is precisely what is being done by this Order. ***Ghia*** requires that the judicious use of discretion must bear in mind the objective of an expeditious trial – in this case, the Suit is of 1996 and since 2019, it has not moved an inch on account of the objection to the six LPCs.

40. An objection that the document sought to be proved is *ab initio* inadmissible in evidence is the next category. Anchor's objection that Articles Y-3 and Y-6 relate to marks that are neither pleaded nor the subject of any relief can be said to fall within this category. As held in ***Ghia***[4], the question of relevance of a document, being a question of law, can be raised and decided at any stage of the proceeding, and it is the duty of the Court to exclude irrelevant evidence even if no objection is taken to its admissibility by the parties. I have accordingly addressed relevance by reference to the issues as framed, and I have explained my thought process above.

4 ***Ghia****, Paragraph 87.*

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41. In my view, ***Ghia*** is of no assistance to Anchor's objections. The Learned Court Commissioner adopted the very procedure endorsed by the Full Bench[5] in the following words:

> *96. The cases; wherein Court Commissioner is appointed to record cross-examination, the Court may decide the question of admissibility of document or proof of such document before the matter is sent for recording of evidence to the Commissioner in the form of cross-examination or re-examination or, in a given case, the Court may decide that question at a subsequent stage. ... **During the cross-examination, if the document is produced and the question leading to its admissibility is raised, then, the Commissioner cannot rule the point as to admissibility of the evidence. In such case, the Court Commissioner is expected to record objection and can give tentative exhibit to the document subject to the decision of the Court.** The **Court would then be obliged to decide the question before the judgment is delivered so that the party producing evidence could not be deprived of its right to tender evidence or an opportunity of producing fresh evidence or opportunity of making up defects which in many cases could be remedied, if he is told that the objection is allowed.***
>
> ***[Emphasis Supplied]***

42. The course followed by the Learned Court Commissioner on August 7, 2019 conforms to this prescription. I have decided the marking now for the reasons set out in this Order. Far from being unknown to law, that is the modality the Full Bench itself contemplates. The obligation that it casts upon the Court, namely, to decide the question, and to decide it in a manner that

5 ***Ghia**, Paragraph 96.*

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does not deprive the party producing the evidence of the opportunity of making good a defect, is discharged by this Order.

43. Two further features of ***Ghia*** are relevant. *First*, the Full Bench read[6] the proviso to Order XVIII, Rule 4(1) of the Code of Civil Procedure, 1908, which provides that where documents are filed and the parties rely upon them, the proof and admissibility of such documents shall be subject to the orders of the Court. The production of the renewed LPCs in the course of the further examination-in-chief of PW-1 is therefore not, by itself, an illegitimate stage of production. *Second*, the Full Bench held[7] that different cases will have different facts, that no straitjacket formula can be evolved, and that the Court trying a suit involving peculiar facts has the discretion to work out its own procedure and determine the stage of deciding admissibility, for reasons to be recorded, if that advances the cause of justice without causing prejudice to the rights of either party. The Full Bench has warned that too technical a construction of procedural provisions, which leaves no room for reasonable elasticity of interpretation, must be guarded against, lest the very means designed for the furtherance of justice be used to frustrate it.

44. Bearing that in mind, in my view, the six LPCs are not irrelevant and frivolous documents to prolong the case – Colgate stands to gain nothing by

6 ***Ghia**, Paragraph 68.*
7 ***Ghia**, Paragraph 89.*

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prolonging the case by bringing on record the fact that the applications or registrations already forming part of the record stand allowed or renewed. On the contrary the opposition and the pending adjudication of this Interim Application have led to the Suit being prolonged over for seven years. The issues framed in the Suit cover five of the registrations, and a document in respect of the sixth registration already stands marked as Exhibit P-36.

45. The Full Bench requires this Order to be precise on the extent of liberty granted to Anchor. The liberty reserved for Anchor by this Order is a liberty to assail the evidentiary weight and probative value of Articles Y-1 to Y-6, to contend that the entries they reproduce do not establish what Colgate says they establish. It is not a liberty to re-agitate the mode of proof of these certificates all over again – that stands concluded by this Order and the analysis of Section 137 of the TM Act set out above. The Full Bench has also held[8] that the marking of a document does not exclude an objection that the document is in itself inadmissible, and the authorities collected by the Full Bench establish that the mere marking of an exhibit does not dispense with proof of the document. Nothing in this Order, therefore, converts the act of marking into a finding on the truth of the contents of Articles Y-1 to Y-6.

46. Therefore, in my view, the Full Bench in ***Ghia*** does not stand in the way of the captioned Interim Application being allowed. It supplies the framework

8 ***Ghia****, Paragraph 76.*

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within which Anchor's objection had to be, and has now been, judicially determined.

Order and Directions:

47. All contentions as to the evidentiary weight and probative value of the LPCs, as available in law, remain available to Anchor. With that explicitly clarified, I am satisfied that the captioned Interim Application deserves to be allowed. In these circumstances, the following order is passed:

A] Articles Y-1 to Y-6 shall be marked into evidence as prayed in the Interim Application, marking them as P-50 to P-55 respectively in the same sequence;

B] As a logical corollary and extension of the same principle, the two further LPCs, namely, Exhibit "B" to the affidavit in rejoinder (relating to registration no. 167064, covered by Article Y-3) and Exhibit "C" to the affidavit in rejoinder (relating to registration no. 319139, covered by Article Y-4) to the affidavit in rejoinder, are permitted to be marked as P-56 and P-57 respectively considering that they are but further species of the same genus of documents and the opposition to the documents as covered in the Interim Application;

C] Since this entire round of litigation could have been avoided had Colgate been diligent, and this being a commercial dispute, an order of

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costs against Colgate, taking into account the greater care expected of an organisation of its scale and size, appears logical at first blush. However, Colgate has paid a disproportionately higher price for this mistake and it would be unfair to further impose costs on Colgate in the peculiar facts of this case. Therefore, factoring in the hardship it has suffered, I am satisfied that costs need not be imposed.

48. It appears that a rectification application in relation to the registration covered by Article Y-1 has been filed and is pending. Nothing in this Order would impact the merits of such proceedings.

49. The Interim Application is ***finally disposed of*** in the aforesaid terms. The parties shall present themselves to the Learned Court Commissioner within a period of one week from the upload of this Order on the Court's website to seek directions on the next steps.

50. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]

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