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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (Main) No.97 of 2009 & C.M. Appl. No.1711 of 2009

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25.03.2010

SURESH C. JAIN

.....Petitioner

Through: Mr. Manav Kumar, Advocate.

Versus

MANOJ JAIN & ORS.

.....Respondents

Through: Mr. U.S. Sharma, Advocate.

Date of Reserve: 12th March, 2010

Date of Order: 25th March, 2010

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

J U D G M E N T

1. By this petition, the petitioner has assailed an order dated 11th August, 2008 whereby applications of the petitioner under Order VI Rule 17 and under Order I Rule 10 CPC were dismissed with cost.

2. The petitioner filed a suit claiming damages against Sh. Manoj Jain, M/s. Arora Trading Company, Satya Electronics and Ashoka Electricals alleging violation of his trade mark 'SHREE' on packaging material and advertisement. During pendency of the petition, the petitioner made application for impleadment of Sh. Satish Kumar Arora, proprietor of 'Jai Mata Industries' on the ground that Sh. Satish Kumar Arora was manufacturing duplicate bulbs under the trade mark 'SHREE' by running Jai Mata Industries which was owned by Sh. Satish Kumar Arora. It was also alleged that

Sh. Satish Kumar Arora was brother of proprietor of M/s. Arora Trading Company, who was already a party to the suit.

3. Every infringement is a separate cause of action. There is no ban on brothers doing different businesses. It is petitioner's own case that Sh. Satish Kumar Arora was running a separate company in the name of Jai Mata Industries and was infringing the trade mark of the petitioner. Thus the petitioner, if so advised, had a right to file a separate suit against Sh. Satish Kumar Arora on the ground of infringement of its trade mark and for damages, if any suffered. The petitioner by way of amendment under Order VI Rule 17 CPC and by way of an application under Order I Rule 10 CPC cannot be allowed to keep on adding different persons infringing its trade mark, in one suit. Every person who infringes the trade mark gives rise to a separate cause of action and he cannot be added as a defendant in a suit which is already pending against other infringer. The trial court, therefore, rightly dismissed the application of the petitioner under Order I Rule 10 CPC.

4. There is another aspect of this case that Sh. Satish Kumar Arora, proprietor of Jai Mata Industries had a trade mark 'KSHREE' registered in his name with Registrar of Intellectual Properties. Against this registration of trade mark, the petitioner had moved an application for removal of trade mark of Sh. Satish Kumar Arora and for rectification of registration. This application was contested by Sh. Satish Kumar Arora and Intellectual Property Appellate Board passed an order on the application of petitioner on 27th February, 2009 holding that Sh. Satish Kumar Arora has been using the trade mark 'KSHREE' at least from the year 1987 till the date of filing of application for registration and from the date of application for registration till the date of filing application for rectification. The application of the petitioner that the trade mark was registered without

bona fide intention to use the trade mark was baseless.

5. In view of this dismissal of application of the petitioner, the petitioner, *prima facie* had no case of infringement against Sh. Satish Kumar Arora. The petitioner did not bring this to the notice of the trial court in the applications under Order I Rule 10 CPC and under Order VI Rule 17 CPC that he had already filed objections against registration of the trade mark 'KSHREE' in the name of Sh. Satish Kumar Arora and also did not bring it to the notice of the trial court that these objections were dismissed by a detailed speaking order on 27th February, 2009. The petitioner continued with this petition despite dismissal of the application.

6. This petition is liable to be dismissed with cost and is hereby dismissed with cost of Rs.25,000/-.

SHIV NARAYAN DHINGRA J.

MARCH 25, 2010
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