

Application Nos.2453 & 2454 of 2015
in
C.S.No.152 of 2015

R.SUBBIAH, J.,

Application No.2453 of 2015 has been filed under Order XIV Rule 8 and Order III Rule 1 of the Original Side Rules read with Clause 12 of Letters of Patent by the applicants/plaintiffs praying to grant leave to institute the present suit against the 2nd respondent herein before this Court.

2.Application No.2454 of 2015 has been filed under Order XIV Rule 8 of Original Side Rules and Order I Rule 10(2) of CPC by the applicants/plaintiffs praying to implead 2nd respondent herein viz.,Microgarde Limited as the 2nd defendant in C.S.No.152 of 2015.

3.The present suit has been filed by the applicants herein/plaintiff for the following reliefs_

(a)a perpetual injunction restraining the defendant, its distributors, stockists, servants, agents, retailers, representatives or any other person claiming under them from in any manner manufacturing, selling, offering for sale, stocking, advertising the impugned stickers filed as Plaintiff Document No.7 or any other product using the plaintiff's trade marks namely_ (i)Micro-Pak (word), or (ii) Micro-Pak Trade Dress or any/or other trade mark/s which is/are identical with or deceptively similar to the plaintiff's said trade marks so as to pass off the defendant's

impugned stickers as and for those of the first plaintiff's Micro-Pak Stickers or in any manner connected with the plaintiff.

(b)a perpetual injunction restraining the defendant, its distributors, stockists, servants, agents, retailers, representatives or any other person claiming under them from in any manner infringing the copyright of the 1st plaintiff by reproducing and/or using the plaintiff's said artistic/literary works in Micro-Pak Trade Dress or any other works which are a substantial reproduction of the plaintiff's said artistic/literary works or in any other manner whatsoever;

(c)the defendant be ordered to surrender to plaintiff for destruction all the defendant's counterfeit products, packets, labels, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the plaintiffs' said trade marks/copyright works;

(d)a preliminary decree be passed in favour of the plaintiff directing the defendant or render account of profits made by use of plaintiffs' said trade marks/copyright works and the trade marks/artistic works and a final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendant after the latter have rendered accounts;

(e)the defendant be ordered and decreed to pay the plaintiff a sum of Rs.25,01,000/- as damages for acts of passing off and infringement of copyright committed by the defendant till date.

(f)for costs of the suit;

4. Pending the suit, by order dated 02.03.2015 in O.A.No.221 of 2015, this Court has granted interim injunction. This Court has also appointed an Advocate Commissioner by order dated 02.03.2015 in A.No.1428 of 2015 and directed the Advocate Commissioner to file his report on or before 30.03.2015. After executing the warrant of commission, the Advocate Commissioner has filed his reported dated 14.03.2015. On perusal of the report of the Advocate Commissioner, it appears that the stickers sold by the 1st respondent, including the stickers that were sold in Chennai, were infact sourced from the 2nd respondent herein/proposed party. The Tax Invoices and delivery challans filed by the Advocate Commissioner along with his report dated 14.03.2015, which were procured from the 1st respondent herein, have emanated from the 2nd respondent/proposed party for sale of the infringing/spurious 'Micropak Plastic Stickers'. The Advocate Commissioner's report further states that the person in charge of the 1st respondent-company viz., one Mr.Nishat Ahmed admitted that the 1st respondent-company has been purchasing the impugned product from the 2nd respondent herein/proposed party from April-2014 and that a fresh order containing about 80 rolls is expected to reach Chennai during the 3rd - 4th week of March. The above counterfeiting is an extremely serious matter since international exporters, importers and brands insist upon the use of the applicants' Micro-Pak Stickers, as a measure of quality, safety and reliability. If the impugned spurious stickers are mistakenly used by the manufacturers in packaging to be exported to countries abroad, the 1st applicant's name and

reputation would be tarnished and destroyed, since the impugned stickers are counterfeit and do not have the efficacy.

5.Hence, the applicants have filed the Application No.2454 of 2015 seeking to implead the 2nd respondent herein as the 2nd defendant in the suit. Since the 2nd respondent-company is situated outside the jurisdiction of this Court, the applicants have filed the Application No.2453 of 2015 seeking to grant leave to institute the present suit against the 2nd respondent herein before this Court.

6.Heard the learned counsel for the applicants and perused the materials available on record.

7.Since the present applications have been filed on the allegations that the act of the 2nd respondent/proposed in making available the impugned stickers under the trademark 'Micro-Pak' in India would be in violation of the intellectual property right of the applicants amounting to infringement of copyright and the tort of passing off and the 2nd respondent/proposed party has also committed criminal offence of counterfeiting, I am of the opinion that without ordering notice to the respondents, these applications could be allowed.

8.Accordingly, both the above applications are allowed as prayed for.

Leave is granted as prayed for and the 2nd respondent is ordered to be impleaded as 2nd defendant in the suit.

Registry is directed to carry out necessary amendment in the cause title within three weeks.

31.03.2015

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