

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2015

CORAM:

THE HONOURABLE MR. SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

Original Side Appeal No. 417 of 2012
and
M.P. Nos. 1 of 2012 & 1 of 2013

Physique
No.518, Sector 37
Pace City-2
Gurgaon - 122 002.

... Appellant/Applicant
Plaintiff

Vs.

Physique India Limited
B-2A, Gem Plaza
No.66, Infantry Road
Bangalore 560 001
rep. by its Director
Mr. Gopal Mohan Nair.

... Respondent/Defendant
Respondent

Prayer: Original Side Appeal filed under Order 36, Rule 9 of Original Side Rules read with Clause 15 of the Letters Patent, to set aside the order and decree dated 25.11.2011 passed by the learned Single Judge, in Application No. 4885 of 2011 in C.S. No.724 of 2008 on the file of this Court.

For Appellant : Mr. K. Prahalad Bhat
for Satish Parasaran

For Respondent : Ms. S. Buvaneswari
for M/s. C. Daniel & Gladys Daniel

J U D G M E N T
(Delivered by The Hon'ble The Chief Justice)

The respondent before us instituted a suit on the Original Side of this Court praying for a decree of permanent injunction restraining the use of trade mark 'Physique' or any other visually similar mark in relation to sports and play things, gymnastics and sporting articles for personal use and use the same pouches, packets or use the mark in invoices, letters heads and visiting cards or any other trade literature.

2. In order to invoke the jurisdiction of this Court, the plaint including cause of action paragraph contains the following averments:

"This Hon'ble Court has got jurisdiction to entertain and try the suit since the appropriate office of the plaintiff's registered Trade Mark is situate at Chennai within the jurisdiction of this Hon'ble Court. The plaintiff's Trade Mark was applied for and registered at the Trade Mark Registry at Chennai since its registered office is situated at Bangalore. The appropriate office of the Trade Mark Registry of the subject Trade Mark is at Chennai. Since the Office of the Trade Mark Registry at Chennai is situated within the jurisdiction of this Hon'ble Court, this Hon'ble Court has got jurisdiction to entertain and try the suit. The plaintiff is also filing an application seeking leave to sue since a substantial part of the cause of action with respect to infringement of registered Trade Mark has arisen within the jurisdiction of this Hon'ble Court."

3. The plaintiff was granted leave to institute a suit by an order dated 22.04.2008 in Application No.3262 of 2008. The defendant/appellant before us moved an application seeking revocation of leave granted by this Court and that application was dismissed by the impugned order dated 25.11.2011.

4. We are informed that the prayer for interim relief stands rejected separately by an order, which is impugned in the connected appeal in O.S.A.No.372 of 2011.

5. A perusal of the impugned order would show that the learned Single Judge, after discussing the issue of territorial jurisdiction,

came to the conclusion that once a part of cause of action has admittedly arisen within the jurisdiction of the Court, i.e. the Trade Mark of the plaintiff/respondent was registered at Chennai and this Court had granted the leave to sue by exercising jurisdiction under Clause 12 of the Letters Patent, it would not be open for the successor of Court to take a different view.

6. The submission of the learned counsel for the appellant is that the impugned order cannot be sustained in view of the judgment of the Full Bench of this Court in Duro Flex Pvt. Limited v. Duroflex Seatings System [2014 (6) CTC 577], which inter alia held that the mere situs of registration of the Trade Mark in Chennai would not create complete cause of action in Chennai and that registration is only a fact, but cause of action consists of a bundle of facts. The legal view to the contrary expressed in various judgments referred to was overruled. It was clearly held that the situs of the registration of Trade Mark being with the Trade Mark Registry was thus by itself not sufficient to give rise to a cause of action to institute a suit, though it may be a factor to be taken into account, among the bundle of facts.

7. We are also not in agreement with the view that if leave is granted, it cannot be revoked, in view of the judgment of the Calcutta High Court in Madanlal Jalan vs. Madanlal and Others (AIR 1949 Calcutta 495), which has been approved in Duro Flex case (supra), while dealing with the provisions of forum conveniens.

8. On our query, learned counsel for the respondent really cannot urge anything to the contrary.

9. The result of the aforesaid is that the impugned order is set aside and the application filed by the appellant in A.No.4885 of 2011 seeking revocation of the leave granted by order dated 22.04.2008 is allowed with all consequences thereof. No costs. Consequently, M.P.Nos.1 of 2012 and 1 of 2013 are closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

ATR

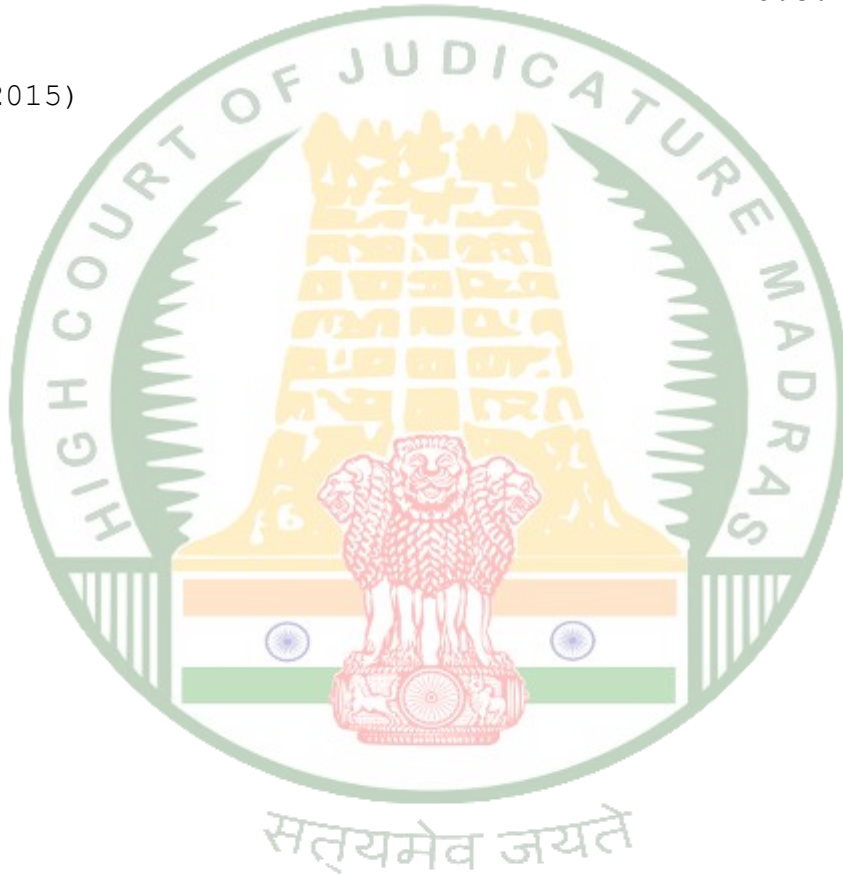
To

The Sub-Assistant Registrar,
Original Side,
High Court, Madras.

+2cc's to M/s.Satish Parasaran, Advocate, S.R.No.44912
+1cc to M/s. C. Daniel & Gladys Daniel, Advocate, S.R.No.44975

O.S.A. No.417 of 2012

UG(CO)
CA(03/09/2015)



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