

**HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

CIVIL REVISION PETITION No.1707 OF 2015

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ORDER: (Per Justice R. Subhash Reddy)

This Civil Revision Petition is filed by defendant No.3 in O.S.No.786 of 2013 aggrieved by the order dated 27.01.2015 passed in I.A.No.400 of 2014 by the learned X Additional Chief Judge, City Civil Court, Hyderabad.

2. The 1st respondent herein is the plaintiff in the aforesaid suit, which is filed seeking the following reliefs:

- “a. For an order of permanent injunction restraining the defendants, their successors in interest, assignees, servants, subordinates, representatives, agents and all other persons claiming under them and acting in concert with them from infringement of the statutory right of plaintiff firm in their Registered Trademark under the Trade Marks Act, 1999.
- b. For an order of permanent injunction restraining the defendants, their successors in interest, assignees, servants, sub-ordinates, representatives, agents and all other persons claiming under them and acting in concert with them from infringement copyright of plaintiff firm to the design including the colour scheme of the logo being the originators and continuous publishers thereof under Copyright Act, 1957.
- c. For an order of permanent injunction restraining the defendants, their successors in

interest, assignees, servants, sub-ordinates, representatives, agents and all other persons claiming under them and acting in concert with them from passing off their showroom services and other optical products or cognate or allied or any other products under the impugned mark “KSR EYE WEAR” word and or any other march which is visually or deceptively similar to the aesthetic features of this plaintiff mark.

- d. For an order of delivery up of all advertising materials having any reference to “KSR EYE WEAR” word mark and logo and or any other mark identical or deceptively similar to this plaintiff’s mark
- e. For damages of Rs.50,00,000/- for loss of reputation and goodwill to their trademark “KSR EYE WEAR” word and the logo
- f. For an order of rendition of accounts by the defendants to the plaintiffs.
- g. An order as to the cost of the proceedings and for such further or other orders as this Honourable Court may deem fit and proper in the circumstances of the case.”

3. The suit is of the year 2013. Petitioner/defendant No.3 has filed I.A.No.400 of 2013 under Section 8 read with Section 5 of the Arbitration and Conciliation Act, 1996 (for short “the Act”) to refer the dispute between the parties to an Arbitrator under the provisions of the Act.

4. It is the case of the petitioner that he and respondent No.1 have entered into partnership deed

dated 21.05.2004 and there is reconstitution of partnership business which resulted in partnership-cum-retirement deed in the year 2009. Alleging that respondent No.1, who is the plaintiff, has tried to enforce certain terms and conditions of the partnership deed dated 21.05.2004 and also reconstituted partnership deed in the year 2009 and both the deeds contain arbitration clause; as such relief is sought to refer the disputes through arbitration process.

5. The 1st respondent/plaintiff filed detailed counter, denying the allegations and alleging that the I.A., is filed to delay the proceedings; partnership deed dated 21.05.2004 was entered between the petitioner and one Mr. V.V. Ramana, as such, plaintiff, defendants 1, 2 and 4 in the suit are not parties to the agreement and Mr. V.V. Ramana and

V. Gouri Devi have formed the partnership firm in which the petitioner-defendant No.3 is retired. Thus, it is pleaded that defendants 1, 2 and 4 in the suit are not parties to the partnership deed dated 21.05.2004 and in respect of partnership-cum-retirement deed dated 01.07.2009. It is further pleaded that the allegations in the suit are with regard to infringement of Trade Mark of the 1st respondent-plaintiff which is clearly outside the purview of the partnership deed and the same cannot be an arbitral issue.

6. The civil court, having considered the matter, dismissed the I.A., filed by the petitioner/defendant No.3.

7. In this Civil Revision Petition, it is submitted by the learned counsel for the petitioner that the 1st respondent-plaintiff placed reliance on the Memorandum of Understanding dated 01.10.2009 in the suit and the said MOU contains arbitration clause; in spite of the same, without invoking arbitration clause, the 1st respondent-plaintiff has filed the suit.

8. On the other hand, it is submitted by the learned counsel for the 1st respondent-plaintiff that the allegation is with regard to infringement of trade mark and copyright and the same is not the subject matter of either partnership deed or partnership-cum-retirement deed. Learned counsel for the 1st respondent-plaintiff relied upon the judgment of the Hon'ble Supreme Court in Civil Appeal No.2079 of 2015 in the case of *M/s. Sundaram Finance Limited and another v. T. Thankam* in support of his submissions.

9. During the course of hearing, a copy of the plaint filed in the suit is placed on record. From a perusal of the plaint, it is clear that the allegation of the 1st respondent-plaintiff is infringement of its trade mark. As per Section 134 of the Trade Marks Act, 1999, suit for infringement, etc., is to be instituted before the District Court only. We

have also perused the relevant clauses in the partnership deed dated 21.05.2004 and the partnership-cum-retirement deed dated 01.07.2009.

10. From a perusal of the aforesaid clauses, it is clear that the dispute raised by the 1st respondent-plaintiff is outside the scope of the said clauses. In any event, having regard to the provision under Section 134 of the Trade Marks Act, 1999, the petitioner cannot seek reference of the dispute to an Arbitrator. The District Court is the designated court under Section 134 of the Act, when there are allegations of infringement of registered trade mark or relating to any right in a registered trade mark or for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff's trade mark, whether registered or unregistered. Having regard to the aforesaid provision, we are of the considered view that the dispute raised is not within the purview of arbitration agreement and there cannot be any agreement contrary to the legislative mandate.

11. For the aforesaid reasons, we do not find any ground to interfere with the impugned order. The Civil Revision Petition is accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions if any pending shall stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

June 25, 2015

MRR