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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1304 OF 2016
IN
SUIT NO. 492 OF 2015

M/s Jayant Industries ...Plaintiffs
Versus
Indian Tobacco Company ITC & Ors ...Defendants
And
Pradeep Dhobale & Ors. ...Applicants

Mr Amir Arsiwala, *i/b Mr Nikhil Mengde, for the Plaintiffs.*
Mrs Tanmayi Rajadhyaksha, *with Mr Nikhil Mutha, i/b Nanu Hormasjee & Co, for the Defendants/Applicants.*

CORAM: G.S. PATEL, J
DATED: 24th January 2017

PC:-

1. This Chamber Summons is filed under Order 7 Rule 11 of the Code of Civil Procedure 1908 by Defendants Nos. 2, 3 & 4. The Defendant No. 2 is described in the plaint itself as Chairman/CEO of the 1st Defendant. Defendants Nos. 3 and 4 are Executive Directors of the Tobacco Division of the 1st Defendant company.

2. The Suit itself is an action in copyright infringement and passing off. Shortly stated, the Plaintiff claims to have copyright in the depiction of the word **CLASSIC**. It claims to use this allegedly copyright-protected work on various products but, importantly for our purposes, ashtrays. The 1st Defendant uses the same word in what the Plaintiff describes is an infringing manner on one of its cigarette products. The Plaintiff also claims that the 1st Defendant's use constitutes passing off.

3. The present application before me is on the basis that as against the Directors, in a plaint such as this, there is no case made out at all. Mrs Rajadhyaksha invites my attention to the prayers. The first two are in the nature of injunctions. The third is a claim for damages. In order to sustain a claim like this jointly and severally against Defendants Nos. 2, 3 and 4, she submits, it would have to be shown that these Defendants are somehow personally liable to suffer an injunction for the acts done by the corporate through its employees and that they are also liable in damages. She points out that in the plaint itself there is no averment to be found that would justify such a reading of the plaint.

4. In response, Mr Arsiwala who appears for the Plaintiff draws my attention to paragraph 17 of the plaint, which reads thus:

> "17. The Defendant No. 3 and 4 with the instruction from Defendant No. 2 has sent their companies Marketing Head F.M.C.G. Mr Atul Joshi to meet to the Father of the Plaintiff Mr Jayant Shah, on 30th October 2012 the Defendant came to the place of the Plaintiff's father Mr Jayant Shah and offer to sale the Copyright of the trade mark and

> Logo "CLASSIC" to the Defendants and Defendants offered to Plaintiff to sale their Copyright for Rs 50 crores to the Defendants, but later on the Defendants didn't came again, there were several e-mail conversation of meetings and offers of purchase of copyright by Defendants, the said e-mails were sent to Plaintiffs father Mr Jayant Shah, Hereto Annexed and Marked Exhibit "G" is the copy of the emails send by the Defendants to the Plaintiffs and vice-versa."

5. On a careful reading of the substance of this paragraph it is evident that what is being said here is not in the nature of a personal liability or allegation or case that Defendants Nos. 2, 3 and 4 acted on their own accord. These Defendants are neither necessary nor proper parties to this suit. At best these Defendants might be witnesses at the trial.

6. Mr Arsiwala relies on the decisions of the Delhi High Court mentioned in paragraph 9 of the Affidavit in Reply but more importantly on the decision of this Court in *Export Credit Guarantee Corporation of India Ltd v Mr T Mathew & Ors*.[1] This sets out the well settled principles governing Order 7 Rule 11. It is his submission that it is not possible to reject the plaint in part. This is not a submission that I am inclined to accept. The application, however worded, is simple and straightforward. It is for dismissal of the Suit as against Defendants Nos. 2, 3 and 4, or for their deletion as party-Defendants to the Suit or for rejection of the plaint against them. The effect of all of this is the same and overriding principle is

12014 (2) Bom CR 481.

also the same, viz., , that one must see the plaint as it stands, without convoluted reasoning, without regard to the defence, to see if there is any cause of action made out as against the Applicants. Now, as is well-known, the expression 'cause of action' is undefined in Code of Civil Procedure 1908. It has been the subject matter of several decisions of various Courts. It is well settled now that "a cause of action" is that bundle of facts which, taken together, gives the Plaintiff a right to relief against the Defendants.

7. Necessarily a cause of action must include a description of some act or omission by a defendant that entitles the plaintiff to relief against that particular defendant. That cause of action must be clearly set out and pleaded. Absent a cause of action there can be no relief. Without an accurate setting out of the act or omission that constitutes the cause of action, it is not possible to infer the existence of a cause of action. Yet this is precisely what paragraph 17 of the plaint does when it says that because, acting as Directors or officers of the 1st Defendant, Defendants Nos. 2, 3 and 4 did certain acts, they stand to be personally liable to the Plaintiffs both in injunction and in damages. In a suit such as this, what is important is that it is not even the Plaintiffs' case, nor can it be, that Defendants Nos. 2, 3 and 4 claim any independent right to the work in question in their own names. The 1st Defendant is a very large corporation. It has several thousand employees at various levels. Many of them, possibly hundreds, are involved in the marketing division and other activities. Many of them will be involved in one way or another with the use of the artwork in question. All of them, however, act only as employees of the 1st Defendant and not in their own right. It is difficult to say from this that just because the

Plaintiff may have some cause of action against the 1st Defendant it must therefore necessarily have a cause of action against all or any of these employees, officers or directors. It is unclear what is being invoked in paragraph 17. If this is a question of vicarious liability of directors then by that logic other directors on the board from the relevant period onward till the final decree would be jointly and severally liable along with the 1st Defendant. That is not even the Plaintiff's case. In addition every other employee who has any form of engagement or association with the work in question would by necessary extension also be personally liable. That too is unstatable.

8. Mrs Rajadhyaksha draws my attention to a decision of the learned Single Judge of this Court (KR Shriram J) in *Euro Glass Ltd v Gutul Trading (India) & Anr*.[2] Shriram J referenced several decisions of the Supreme Court including *Church of Christ Charitable Trust & Educational Charitable Society v Ponniamman Education Trust*[3] and *T Arivandandam v TV Satyapal*.[4] Various other decisions are also cited. An important definition of cause of action appears in *ABC Laminart Pvt Ltd & Anr v AP Agencies, Salem*.[5] That definition may be usefully reproduced below:

> "12. A cause of action means every fact, which if traversed, it would be necessary for the Plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts

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2Notice of Motion No. 9 of 2011 in Suit No. 1846 of 2009, decided on 29th October 2015.

3(2012) 8 SCC 706

4(1977) 4 SCC 467

5(1989) 2 SCC 163

> which taken with the law applicable to them gives the Plaintiff a right to relief against the Defendant. It must include some act done by the Defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the Plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the Defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the Defendant nor does it depend upon the character of the relief prayed for by the Plaintiff."

9. The test in the present case as in the case before Shriram J is to see what cause of action as defined has been made out against Defendants Nos. 2, 3 and 4. A I have noted, other than this one paragraph there is nothing. The repeated use of the words Defendants in the plural does not carry the Plaintiffs' case any further.

10. I will allow the present Chamber Summons in terms of prayer clause (a) against Defendants Nos. 2, 3 and 4. I do so for a simple reason that it does not disclose a cause of action against these Defendants.

11. In my view also the same result would follow if one was inclined to invoke the powers of the Court under Order 1 Rule 10(2) of the Code of Civil Procedure 1908. That Rule empowers a Civil Court to strike out any party at any stage of the proceedings either upon or without an application by either party or to join any other party. This can be done in order to ensure an effective and complete adjudication with the questions involved in the Suit.

12. As far as these Defendants are concerned, the result is the same. There is no cause of action against Defendants Nos. 2, 3 and 4. They will be deleted as party-Defendants to the Suit.

13. For the present, no order is being passed on the other Chamber Summons No. 868 of 2016 pending the filing of a Rejoinder.

14. This order is without prejudice to the rights and contentions of both sides in Chamber Summons No. 868 of 2016.

(G. S. PATEL, J.)