

JSN

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 225 OF 2016
AND
NOTICE OF MOTION NO. 1932 OF 2015
IN
SUIT NO. 995 OF 2015
WITH
CHAMBER SUMMONS NO. 229 OF 2016
AND
NOTICE OF MOTION NO. 381 OF 2016
IN
SUIT NO. 1080 OF 2015**

Siddhi Vinayak Knots & Prints Pvt Ltd & Anr ... Plaintiffs
Versus
Crafts Villa & Ors ... Defendants

Ms Farzana Khan, i/b Bhushan Mahadik for Plaintiffs / Applicants
in all Chamber Summonses.
Ms Jennifer Michael, i/b Anil D'Souza for Defendants Nos. 1 to 4.

CORAM: G.S. PATEL, J
DATED: 1st February 2017

PC:-

1. This is a common order in both suits. I will use the facts and the array of parties in the first of these, Suit No. 995 of 2015.

2. On behalf of the 1st Defendant, Crafts Villa, an intermediary within the meaning of Information Technology Act, it is pointed out that there is absolutely no cause of action in the Plaint against Defendants Nos. 1 to 4. Defendants Nos. 2, 3 and 4 are all persons associated with Defendant No.1. Defendants Nos. 5 and 6 are supposed to have copied Plaintiffs' design and offered it for sale through the 1st Defendant's web portal craftsvilla.com. Ms Michael for Defendants Nos. 1 to 4 submits that these Defendants be deleted from the array of defendants or that the suit be dismissed against them.

3. It is quite clear that there is no cause of infringement against the 1st Defendant, an intermediary. It has been repeatedly said to me that the Plaintiffs do not have the address and details of the actual wrongdoer, Defendants Nos. 5 and 6, and that this information is available through Defendants Nos. 1 to 4. That may be correct. It is also correct that in previous matters against Crafts Villa and its executives I had directed Crafts Villa to furnish the information on demand.

4. In these two cases, a wholly distinct cause of action is pleaded. Before these suits were filed, Mr Mahadik on behalf of the Plaintiffs made a demand to Mr D'Souza, the Advocate who had entered appearance for the Crafts Villa and its officers in the previous litigations, to disclose the names of others said to be

infringing the Plaintiffs' copyright and designs. This request was by an emails dated 23rd to 26th September 2015. Mr D'Souza responded by email on 28th September 2015. A copy is annexed at Exhibit 1 to the Affidavit in Reply to the Notice of Motion No 1932 of 2015. The necessary information about the existing Defendants Nos. 5 and 6 was in fact furnished along with their mobile numbers, the addresses in Surat and their email id. On this surely the Plaintiffs ought to have known there was no case to prosecute against Defendants Nos. 1 to 4. Yet, on 1st October 2015, *after* receiving the information that Mr D'Souza provided, the Plaintiffs filed this Suit against Crafts Villa and its officers and the parties whose information and contact details had been provided, and sought interim reliefs.

5. It does not end at that. The matter has been pursued in the Registry to the stage that Crafts Villa has been compelled to file a Written Statement although, as I have noted, there is absolutely no cause of action against Defendants Nos. 1 to 4. Not only this but the Plaintiffs have admittedly receipt of the communication from Mr D'Souza. That is also a matter of record. The information supplied by Mr D'Souza has in fact been used and this is apparent from the names and addresses of Defendants Nos. 5 and 6 in the cause title of the Suit. The images complained of were in fact removed from the Crafts Villa website within 48 hours and this is apparent from paragraph 1 of Mr D'Souza's email of 28th September 2015.

6. What is even more astounding is that despite Mr D'Souza pointing out that the Plaintiffs would need to clear their browser cache or else they would be left with the mistaken impression that

the images continued to be hosted on the Crafts Villa site, and despite Mr D'souza's email making it clear that the images had in fact been taken down from website, the plaint proceeds to make allegations against Defendants Nos. 1 to 4. Receipt of this email is not denied. It is admitted in the Affidavit in Rejoinder. One does not actually need to go to the Rejoinder because it is admitted even at pages 121 to 125 of the Plaint and also at pages 126 to 128. Despite all this, the Plaint however continues repeated allegations of wrong doing against the Defendants Nos. 1 to 4, as if they personally, though only intermediaries, are responsible for the alleged infringement or at least actively aided it. Paragraph 36 accuses these Defendants of "that the dishonest and fraudulent intentionto cheat the Plaintiffs". This intemperate language continues throughout. The allegation made is that the despite Mr D'Souza's letter the website continues to display the offending images. What is conveniently passed over is Mr D'Souza note of caution that this could be entirely to technical incompetence on the part of the Plaintiffs in assessing how information is displayed on the Internet.

7. In other words, the suits proceed on the basis that Defendants Nos. 1 to 4 are equally guilty as infringers though, demonstrably, they took no part in the infringement itself and only served as intermediaries and, on Mr Mahadik's request, not only supplied the information but also took down the images and material of which infringement was alleged.

8. Both suits are wholly without any cause of action against Defendants Nos. 1 to 4 from the date that they were filed. The result must be that as against Defendants Nos. 1 to 4 these suits cannot be

possibly proceed. Defendants Nos. 1 to 4 are neither necessary nor proper parties. This is enough reason to invoke the power in the Court in Order 1 Rule 10(2) of the Code of Civil Procedure, 1908. I choose to exercise that power immediately. Defendants Nos. 1 to 4 are ordered to be deleted as party Defendants to the suit. The Plaintiffs will carry out the necessary amendments without need of reverification by 6th February 2017.

9. In view of this, the Notices of Motion also do not survive against Defendants Nos. 1 to 4.

10. The other Defendants have been served with a Writ of Summons. The suits will proceed only against those Defendants.

11. I would ordinarily have awarded costs against the Plaintiffs in this matter and these would have been considerable. The only reason I have refrained from doing so today is that Mr Mahadik is not himself available.

(G. S. PATEL, J.)