

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.02.2017
PRONOUNCED ON 10.03.2017
CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

Application Nos. 2069, 2071 and 2076 of 2015
in C.S.No.195 of 2013

1. Mrs. A. Sreedevi .. Applicant/ 5th def.in A.No.2069 of 2015
4th respondent in A.No.2071 of 2015
5th respondent in A.No.2076 of 2015

2. Mr.Baranidharan .. Applicant/ 6th def. in A.No.2069 of 2015
5th respondent in A.No.2071 of 2015
6th respondent in A.No.2076 of 2015
vs.

1. M/s. Wooltop Design Private Limited
F72, Anna Nagar East
Opposite Chintamani Super Market
Chennai – 102,
represented by its Director
Mr.N.Jayaraman

.. 1st respondent/plaintiff
in A.No.2069,2071 of

2015

and 2076 of 2015

2. M/s. Innovativ Dezines
represented by its Partner
Mr.Riaz Razzack
No.10/11, Rutland Gate,
5th Street,Nungambakkam,
Chennai – 600 006

.. 2nd respondent/ 1st def.
in A.No.2069,2071 2015

3. Mrs. A.D. Subapradha .. Applicant in A.No.2076 of 2015
 .. 3rd respondent/ 2nd def.
 in A.No.2069,2071 2015
 2nd respondent in A.No.2076 of
 2015
4. Mr.Riaz Razzack .. 4th respondent/ 3rd def.
 in A.No.2069 of 2015
 Applicant in A.No.2071 of 2015
 3rd respondent in A.No.2076 of 2015
5. Mr.Rafia Razzack .. 5th respondent/ 4th def.
 In A.No.2069 of 2015
 2nd applicant in A.No.2071 of 2015
 4th respondent in A.No.2076 of
 2015

Applications filed under Order XIV Rule 8 of Madras High
 Court Original Side Rules read with Order VI Rule 16 of the Civil
 Procedure Code 1908 and 151 of CPC..

For applicant in

A.No.2069 of 2015 : Mr.P.Munusamy

For applicant in

A.Nos.2071 and

2076 of 2015 : Mr. K.M.Aasim Shehzad

For respondent
Narayanan

:Mr. Vijaya

Senior Counsel for
M/s.M.Vidya

COMMON ORDER

The captioned applications have been filed by the original defendants 1, 3 to 6 for striking out the pleadings in the plaint in paragraphs 9 to 13, 35 to 38 and 41 to 43 and consequent prayers a, b, d and e in C.S.No.195 of 2013.

2. The instant suit has been filed by the original plaintiff alleging that the original 1st defendant is infringing the copyright in the artistic work found in the products manufactured by them. According to the applicants/original defendants 1, 3 to 6, the reliefs claimed by the original plaintiff under the copyright Act are statutorily barred under Section 15 (2) of the Copyright Act, 1957. It is stated that the original plaintiff's claim copyright in all the averred materials are subject matter of registration under the Designs Act, 2000. In

the absence of registration under the Designs Act, 2000, the statutory protection available to a registered design is no longer available to the original plaintiff. It is also stated that the original plaintiff has not filed any documentary evidence to establish that it has applied for copyrighting the drawings. Hence, the original defendants 1,3 to 6 have filed the captioned application.

3. It is the case of the original plaintiff that the original defendants 1, 3 to 6 have already filed application being Application No.1827 of 2013 to reject the plaint on the same grounds, as have been raised in these applications, but the same was dismissed, by this Court, vide order dated 03.4.2014. As against the same, appeal, being OSA.No. 113 of 2014, was filed, which was subsequently dismissed as withdrawn, vide order dated 22.01.2015, *inter alia*, confirming the interim arrangement requiring the defendants to file quarterly returns to continue as the final arrangement. However, the original

defendants have deliberately failed to comply with the initial order passed in O.A.Nos.190 and 191 of 2013 though the same was confirmed in the aforementioned O.S.A. Till date, they have failed to file the returns in the suit as per the order. It is stated that the original defendants are trying to achieve by indirect means what they could not achieve by direct means. Thus, prayed for dismissal of the application.

4. The learned counsel for the original defendants 1, 3 to 6 submitted that the suit itself is not maintainable in view of Section 15 of the Copyright Act. According to the original defendants, any Artistic work by industrial application transforms into a commercially marketable article, its designs falls within the domain of the Designs Act and the protection to the design founded upon the artistic work is limited by Section 15 of the Copyright Act, and the provisions of the Designs Act, 2000. The original plaintiff's alleged copyright in all materials, as claimed has been reproduced more than 50 times even

before the date of filing the suit. Hence, it is submitted by the learned counsel that the suit is not maintainable. Therefore, it is the submission of the learned counsel for the original defendants that necessary pleadings made in the plaint in this regard have to be struck off. If the pleadings with regard to the Copyright have been struck off, then the Court has no jurisdiction to decide the suit in view of the fact that the leave has not been obtained to institute the said suit, since the defendants are residing outside the jurisdiction. Hence, submitted that the suit is nothing but abuse of process of law.

5. The learned counsel for the original defendants 1, 3 to 6, by placing reliance on the judgments reported in *MIPR 2009 (2) 229 (Microfibres Inc. v. Girdhar and co., and another)*; *2012 (129) DRJ 105 (Kiran Shoes Manufacturers v. Registrar of Copyrights and Another)*; *2013 (6) CTC 247 (Urooj Ahmed, Lords Enterprises (India) v. Preethi*

Kitchen Appliances Private Limited); AIR 1998 SC 1297
(K.K.Modi v. K.N.Modi and Others); 1986 (1) Scales 573
(Azhar Hussain v. Rajiv Gandhi); and 2007 (99) DRJ 475
(Mrs.Pamela Kumar v. Mr.Chandrashekhar and Ors.) has
 submitted that the pleadings of the plaint are liable to be
 struck off.

6. Whereas, it is the submission of the learned Senior counsel for the original plaintiff that previously original 1st defendant has filed an application to reject the plaint in A.No.1827 of 2013 on the very same grounds and the said application was dismissed by this Court, vide order dated 03.4.2014. As against the same, appeal, being OSA.No.113 of 2014, was preferred before this Court and subsequently, the same was withdrawn by the original 1st defendant. It is the submission of the learned Senior counsel that merely because Leave was granted by the First Bench, while permitting the 1st defendant to withdraw the application, that itself cannot be a

ground to file the present applications. The learned Senior counsel for the original plaintiff further submitted frivolous or vexatious statement have not been made in the plaint. In the absence of proof to show that the pleadings are frivolous or vexatious or abuse of process of law, the same cannot be struck off. Hence, the learned counsel for the original plaintiff submitted that the applications have to be dismissed. The learned senior counsel has relied upon the judgment of the Hon`ble Supreme Court in ***Abdul Razak v.Mangesh Rajaram Wagle and others*** [(2010) 2 SCC 432] and ***S.Malla Reddy v. Future Builders Co-operative Housing Society and Others*** [(2013) 9 SCC 349] to substantiate his contention.

7. In the light of the above submissions, now the point arose for consideration is as to whether the pleadings set out in the plaint in paragraphs 9 to 13, 35 to 38 and 41 to 43 are liable to be struck off.

8. Admittedly, the suit itself is filed for permanent injunction restraining the original defendants jointly and severally from in any manner infringing upon the original plaintiff's copyright in the products and samples of the original plaintiff including the products, more particularly, set out in the Annexure "A" to the plaint including by way of selling and or exporting the products to buyers, modifying the product design, using the samples including displaying, recreating, modifying the samples and or procuring orders from the samples and also for consequential reliefs. The entire plaint pleadings would go to show that the plaintiff is the manufacturer of quality fabrics and in the course of business, the plaintiff had to manufacture product samples, as per the requirements of each buyer in terms of design, price and feasibility. Each sample created by the plaintiff contained a unique design with one or more colours and at times, also contained embroidery work. The original 2nd defendant, who was an employee in the plaintiff company, unlawfully removed the plaintiff's all documentation and took

the sample of the plaintiff and looted the customer of the plaintiff. Hence, the original plaintiff filed the present suit.

9. It is pertinent to note that previously, original 1st defendant has moved an application being A.No.1827 of 2013 for rejection of plaint on the ground that the suit is barred by copyright Act. This Court, after considering the entire facts, dismissed the aforementioned application. As against the same, appeal, being OSA.No.113 of 2014, was filed before the Division Bench of this Court. While taking up the matter, the Hon`ble First Bench opined that the Application under Order 7 Rule 11 filed by the original 1st defendant could not have been maintainable stating that there cannot be a piecemeal adjudication of an application for rejection of plaint. Therefore, the learned counsel appearing for the original 1st defendant, withdrew the above appeal. The operative portion of the said

order is usefully reproduced hereunder:-

“ 5. The suit would now itself proceed to trial subject to the right of the appellant to move any other application, as may be advised and feasible, which may be a bar to the maintainability of the suit, which would be examined by the learned single Judge, if so moved, on its own merits, subject to the defences of the first respondent/original plaintiff. ”

10. Taking advantage of the above order passed by the Division Bench of this Court, the Original 1st defendant has filed the present applications assailing that the suit is not maintainable under copyright Act and pleadings in the plaint are vexatious, frivolous and abuse of process of law. In the earlier application, i.e., application filed for rejection of

plaint,(A.No.1827 of 2013) the same issue was raised i.e., issue of maintainability of copyright, and the same was negated by this Court. Further, the appeal filed against the said order was also dismissed as withdrawn. Therefore, the applicants/original defendants 1, 3 to 6, in order to get over the previous order passed by this Court, have chosen to file the present applications under different provisions to strike out the pleadings. For better appreciation of the case, it is useful to extract Order 6 Rule 16 of CPC, which reads as follows:

“ 16. Striking out pleadings.- The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading -

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice,

embarrass or delay the fair trial of the suit,

or

*(c) which is otherwise an abuse of the
process of the Court.”*

11. A conjoint reading of Order 6 Rule 16 of CPC, goes to show that only in three situation, the plaint pleadings can be struck off. When the pleadings are considered by this Court as unnecessarily or scandalous or frivolous or vexatious or if the Court feels that the pleadings may tend to prejudice or delay the fair trial of suit or if the pleadings are otherwise an abuse of the process of the Court, then the same can be struck off. But it is not the case of the original defendants herein that pleadings are scandalous, frivolous or vexatious.

12. It is undisputed fact that the original plaintiff has filed the instant suit making definite allegations and factual scenario

in the plaint. Similarly, on a careful reading of the entire plaint, this Court does not find any scandalous statement. Likewise, the plaintiff, being the dominant litus, has made pleadings to establish their right before the Court of law and the same cannot be considered as unnecessary and abuse of the process of law. Even though the contention of the learned counsel for the original defendants that the suit itself is not maintainable is true, the same can very well be decided in the trial itself and no prejudice would be caused to the original defendants.

13. Of course, the suit itself is liable to be rejected at the initial stage, when it is barred by law. But in the given case, the rejection application filed by the original 1st Defendant has already been decided by this Court in favour of the original plaintiff. Against which, the appeal filed and the same was also dismissed and thereby reached finality. Now the same cannot be re-agitated conveniently by filing the above applications in

different provisions of law. Filing of such application on the similar ground, which was already taken in the previous application, itself is nothing but abuse of process of law.

14. Though the learned counsel for the original defendants have made several attempts to convince the Court to strike out the pleadings by citing judgment in ***Azhar Hussain v. Rajiv Gandhi***, in the above case, considering the entire pleadings, the Hon`ble Supreme Court has rejected the plaint, as there was no cause of action. Further, the Hon`ble Supreme Court, in the said judgment has observed as follows:

“11. Even in an ordinary Civil litigation, the Court readily exercises the power to reject a plaint if it does not disclose any cause of action. Or the power to direct the concerned party to strike out

unnecessary, scandalous, frivolous or vexatious parts of the pleadings. Or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law. “

Absolutely, there is no dispute with regard to the proposition of law laid down by the Supreme Court. But the fact remains that none of the grounds, as stated in the above judgment, have been made out in this case to strike out the pleadings. Therefore, the above judgment is not applicable to the facts of the present case.

15. Similarly, in ***Microfibres Inc. v. Girdhar and co., and another***, the Division Bench of High Court of Delhi has held as follows:

“ 11. After examining the aforesaid

side trim minutely and having regard to the aforesaid fact, we are of the view that this side trim is a design under the Designs Act and, therefore, Section 15 (2) would clearly be attracted. A Division Bench of this Court in the case of Microfibres Inc. vs. Girdhar and Co., and Anr.2009 (40) PTC 519 held that if the design is registered under the Designs Act, the Design would lose its copyright protection under the copyright Act. If it is a design registrable under the Designs Act but has not so been registered, the Design would continue to enjoy copyright protection under the Act so long as the threshold limit of hits application on an article by a industrial process for more than 50 times is reached. But once that limit is crossed, it would lose its copyright protection under the copyright Act. This interpretation would harmonize the copyright and the Designs Act in accordance with the legislative intent. “

There is no dispute with regard to the proposition laid down in respect copyright. But, in the case on hand, the issue involved is as to whether the suit is liable to be struck off or not. Therefore, the above judgment is not applicable to the facts of the present case.

16. In the judgment reported in ***Pamela Kumar v. M.Chandrashekhar and Ors.*** (cited supra), the High Court of Delhi, by following the judgment of the Hon`ble Supreme Court, has held that frivolous or vexatious proceedings may also amount to an abuse of the process of Court especially where the proceedings are absolutely groundless. No doubt, the Court has a power to summarily stop the proceedings so as to prevent the time of the public and the Court from being wasted, if vexatious proceeding has been initiated. But in this case, the applicants/original defendants 1, 3 to 6 have already taken a similar ground in the earlier application i.e. to reject the plaint and the dismissal of the said application had reached

finality and, therefore, the original defendants now cannot canvass the same ground before this Court on a different provision of law, as the issue involved in this case has to be decided only in the trial. Therefore, the above judgment is also not applicable to the facts of the present case.

17. Similarly, in ***K.K.Modi v. K.N.Modi and Others***, the Hon`ble Supreme Court has held as follows:

41. Under Order 6 Rule 16, the Court may, at any state of the proceeding, order to be struck out, inter alia, any matter in any pleading which is otherwise an abuse of the process of the Court. Mulla in his treatise on the CPC. (15th edition, Volume II, page 1179 note 7) has stated that power under Clause (c) of Order 6 Rule 1 of the Code is confined to cases where the abuse of the process of the court is manifest from the pleadings; and that this power is unlike the power under Section 151 whereunder Courts

have inherent power to strike out pleadings or to stay or dismiss proceedings which are an abuse of their process. In the present case the High Court has held the suit to be an abuse of the process of Court on the basis of what is stated in the plaint.

42. The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraph 18/19/33 (page 344) explains the phrase "abuse of the process of the court" thus: "This term connotes that the process of the court must be used bonafide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation....The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the

interests of justice may be very material.”

One of the examples cited as an abuse of the process of court is re-litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexations proceedings may also amount to an abuse of the process of court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of courts'

discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding. “

In the said judgment, the Hon`ble Supreme Court has held that filing such application, after suffering order in the previous application, in different provision of law is nothing but abuse of process of law. Admittedly, in the case on hand, the original 1st defendant already took out an application for rejection of plaint and the same reached finality. Therefore, the above judgment cited by the learned counsel for the original defendants would not serve any purpose to the original defendants.

18. In the case of ***Urooj Ahmed vs. Preethi Kitchen Appliances Private Limited*** cited *supra*, this Court has held

as follows:

*5(c)The provisions of Copy right Act, 1957
and Designs Act, 2000:*

*5(c) (i) Section 2(c) of the Designs Act, 2000
defines a “copyright” to mean an exclusive
right to apply a design to any article in
any class in which the design is registered.
Section 11 of the said Act deals with a
copyright of the registered proprietor of
the design.*

*5(c)(ii)Coming to the provisions of
Copyright Act, 1957, there is no definition
of copyright in the definition clause.
However, Section 2(c) defines “artistic
work”. Therefore, it is clear that an artistic
work as defined under Section 2(c) of the*

Copyright Act does not come under the purview of the Designs Act, 2000. Section 14 of the Act is a specific provision, which gives the meaning to the word “copyright”. According to which, a copyright means “an exclusive right to do certain acts prescribed therein in respect of a work or a substantial part thereof. The important section be considered before us is Section 15 of the Copyright Act, 1957. It is a special provision regarding a copyright in a design registered or capable of being registered under the Designs Act, 2000. The said provision in clear terms mandates that no copyright shall subsist in any design, which is registered under the Designs Act, 2000. It does not stop with it. Under Section 15(2) a copyright in any design, which is capable of being registered under the Designs Act, 2000 but which has not been so registered, shall cease as soon as any article to which the design has been applied has been

reproduced more than fifty times. Therefore, on a reading of Section 15 of the Copyright Act, 1957, it is very clear that a copyright of a design, which is registered under the Designs Act, 2000, cannot claim protection under the Copyright Act, 1957. Therefore, such a design registered under the Designs Act, 2000, would be governed only by the provisions of Designs Act, 2000 and not the Copyright Act, 1957. In other words,, the provisions contained in the Designs Act, 2000, and Copyright Act, 1957, are distinct and separate functioning in their respective spheres, With that legislative intent, Section 15 of the Copyright Act, 1957, has been introduced. In view of the above said clear cut division between the two enactments, we are of the view that the reasoning of the learned Single Judge to the effect that a design registered under the Designs Act, 2000, can claim protection under the Copyright

*Act, 1957 cannot be sustained. In this connection, we agree with the view expressed in the majority Judgement rendered by the Full Bench of the Delhi High Court in **Microtube India Limited v. Rakesh Kumar**, 2013 (55) PTC 61. Paragraph 15.2 of the majority Judgement is usefully quoted here under:*

“Thus in the effect, after registration, the registrant has in its possession a copyright in an industrial design. By statutory fait, such industrial designs, which are registered under the designs Act, are excluded from protection of the Copyright Act (see Section 15(1) of the Copyright Act). There is, however, a caveat added by the legislature to this, which is, that a copyright in any design which is capable of being registered under the designs Act, shall

have protection under the Copyright Act, till such time it is not reproduced more than 50 times by an industrial process by the owner of the copyright or with his licence by any other person (See Section 15(2) of the Copyright Act). This of course would be subject to the provisions of Section 13 of the Copyright Act, which enumerates the works in which copyright can subsist.”

There is no dispute with regard to the proposition laid down in this case. But in this case, as already discussed above, the issue involved has to be decided only after a full fledged trial. Therefore, the above judgment is not applicable to the facts of the present case.

19. Insofar as the judgments relied on by the learned Senior Counsel for the original plaintiff in the case of **Abdul**

Razak v. Mangesh Rajaram Wagle and others and S. Malla Reddy v. Future Builders Co-operative Housing Society and Others, are concerned, I am of the view that the same would squarely applicable to the facts of the present case. In the first judgment, the Hon`ble Supreme Court has held as follows:

“ 16. Order 6 Rule 16 CPC which empowers the court to strike out the pleadings reads thus:

16. Striking out pleadings.-The court may at any stage of the proceedings order to be struck out or amended any matter in any pleading-

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the court.”

A reading of the plain language of the above reporduced provisions makes it clear that the

court's power to strike out any pleading at any stage of the proceedings can be exercised in either of the three eventualities i.e. Where the pleadings are considered by the court unnecessary, scandalous, frivolous or vexatious; or where the court is satisfied that the pleadings tend to prejudice, embarrass or delay the fair trial of the suit or which is otherwise considered as an abuse of the court.

17. Normally, a court cannot direct or dictate the parties as to what should be their pleading and how they should prepare their pleadings. If the parties do not violate any statutory provision, they have the freedom to make appropriate averments and raise arguable issues. The court can strike off the pleadings only if it is satisfied that the same are unnecessary, scandalous, frivolous or vexatious or tend to prejudice, embarrass or delay the fair trial of the suit or the court is satisfied that suit is an abuse of the process of the court. Since striking off the pleadings has serious adverse impact on the rights of the

party concerned, the power to do so has to be exercised with great care and circumspection."

20. Similarly, in the second judgment cited above, the Hon`ble Supreme Court has held as follows:

25. Order 6 Rule 16 CPC has been substituted by the CPC (Amendment) Act, 1976. This provision deals with the amendment or striking out of the pleadings, which a party desires to be made in his opponent's pleadings. In other words, the plaintiff or the defendant may ask the court for striking out the pleadings of his opponent on the ground that the pleadings are shown to be unnecessary, scandalous, frivolous or vexatious. This Rule is based on the principle of ex debito justitiae. The court is empowered under this rule to strike out any matter in the pleadings that appears to be

unnecessary, scandalous, frivolous or vexatious or which tends to prejudice, embarrass or delay the fair trial of the suit.

26. On the other hand, Order 6 Rule 17 CPC empowers the court to allow either party to alter or amend his own pleading and on such application the court may allow the parties to amend their pleadings subject to certain conditions enumerated in the said Rule.

27. The High Court in the impugned order has rightly held that the filing of subsequent application for the same relief is an abuse of the process of the court. As noticed above, the relief sought for by the defendants in a subsequent petition under Order 6 Rule 17 CPC was elaborately dealt with on the two earlier petitions filed by the appellant-defendants under Order 6 Rule 16 and Order 8 Rule 9 CPC and, therefore, the subsequent petition filed by the defendants labelling the petition under Order 6 Rule 17

CPC is wholly misconceived and was not entertainable.”

21. As observed by the Hon`ble Supreme Court in the above cited judgments, in the case on hand, admittedly, there is no statement made in the plaint with regard to the scandalous or vexatious nature of litigation. The contention of the original defendants that the suit is not maintainable in view of some provisions of law is not sustainable, as the rival contention of the parties have to be established by producing oral and documentary evidence. Merely because some allegation has been made in the application, that itself cannot a ground to strike out the pleadings, particularly, when the 1st defendant has already taken similar defence in the previous application and the same ended against him. The conduct of the original defendants' in moving the above applications on the very same ground, as has been raised in the previous application, is nothing but abuse of process of law. Hence, this

Court is of the view that the applications are liable to be rejected.

22. Accordingly, the captioned applications are dismissed with costs of Rs.2000/- in each applications.

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10..03..2017

Index : Yes/No

Internet : Yes/No

N.SATHISH KUMAR, J

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Pre-delivery order in
Application Nos. 2069, 2071 and 2076 of 2015
in C.S.No. 195 of 2013

10..03..2017

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