

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1687 of 2017
& C.M.P.No.7941 of 2017

- 1.M/s.Shiv Trading Company,
Rep. by its Proprietor Mr.Raj Kumar Sabu,
53/2 Kalai Mohall, Bansi Bhawan,
Chhawani, Indore,
Madhya Pradesh.
- 2.AVMH Corporation,
I-36, Krishnan Purur,
Ammapet, Salem-636 003. .. Petitioners

Vs.

Subu Trade Pvt. Ltd.,
No.114, Narasimman Road,
Shevapaet,
Salem-636 002.
Tamil Nadu .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decreetal Order, dated 15.03.2017 passed by the Principal District Judge, Salem in I.A.No.275 of 2016 in O.S.No.148 of 2016, which was received by the petitioners on 06.04.2017, on the file of the Principal District Judge, Salem.

For Petitioners : Mr.Ravi Paul, Senior Counsel
For Mission Legal Advocates

For Respondent : Mr.K.Rajasekaran
Caveator

ORDER

This Civil Revision Petition has been filed against the fair and decreetal Order, dated 15.03.2017 passed by the Principal District Judge, Salem in I.A.No.275 of 2016 in O.S.No.148 of 2016.

2. The petitioners are defendants in O.S.No.148 of 2016 and the respondent is the plaintiff. The respondent filed the above suit for injunction and for declaring that the respondent is the proprietor of the trademark / label SACHA MOTI and entitled to use and sale the goods Sabudana and other food products for human consumption under the said trade mark and for permanent injunction, restraining the petitioners and for other reliefs in respect of the trade mark. The petitioners filed I.A.No.275 of 2016 under Order VII Rule 11 and Section 151 of C.P.C. for rejection of the plaint.

3. According to the petitioners, the petitioners have filed C.S.No.761 of 2016 on the file of the High Court, Delhi and obtained interim injunction against the respondent. The respondent also initiated proceedings before the Intellectual Property Appellate Board, Chennai. The respondent had filed various suits in different Courts for the same relief and plaint in the present suit is liable to be rejected.

4. The respondent filed a counter affidavit and submitted that the respondent filed the present suit on 04.06.2016 and the petitioners having come to know the filing of the suit on 04.06.2016, filed the Suit in O.S.No.761 of 2016 before the High Court, Delhi. In continuation of the said suit, as well as proceedings before the Intellectual Property Appellate Board, is not a bar for initiation of the present suit and on that ground, the claim cannot be rejected.

5. The learned Judge, considering the averments in the affidavit, counter affidavit and averments in the plaint, dismissed the application, holding that unless the respondent gets an executable decree, he cannot enforce his right. If the suit filed by

the petitioner before the High Court, Delhi is dismissed, the respondent will not be in a position to enforce his right. The pendency of the proceedings before the Intellectual Property Appellate Board is not a ground for rejection of the plaint.

6. Against the said order dated 15.03.2017 made in I.A.No.275 of 2016 in O.S.No.148 of 2016, the present civil revision petition is filed by the petitioners/defendants.

7. Heard the learned Senior Counsel for the petitioners and perused the materials available on record.

8. The learned Senior Counsel for the petitioners reiterated the averments made in the affidavit filed in support of the application to reject the plaint and contention raised in the grounds of revision. The contention of the petitioners is that due to pendency of the suit before the Delhi High Court and proceedings before the Intellectual Property Appellate Board, the present suit has to be rejected and that Court has no jurisdiction to decide the issue. The learned Judge has considered all the facts in a proper perspective and rejected the same for the reasons that the respondent must

obtain an executable decree to enforce his right. The learned Judge has rightly held that if the suit before the High Court, Delhi, filed by the petitioner is dismissed, the respondent will be left without any remedy to enforce his right. In these circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 15.03.2017. It is open to the petitioners to raise all his jurisdictional issue before the learned Principal District Judge, Salem.

9. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.06.2017

Index : Yes/No

r n s

V.M.VELUMANI, J.

r n s

To

The Principal District Judge,
Salem.

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