

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09..01..2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Original Side Appeal No.27 of 2013

and

M.P.No.1 of 2013

Karan Kher

... Appellant

-Versus-

M/s.Aravind Laboratories,
No.3/17, Valluvar Salai,
Ramapuram,
Chennai 600089.
Rep. by is Partner,
Mr.T.Devanathan

... Respondent

Original Side Appeal under Order 36, Rule 9 of
Original Side Rules r/w Clause 15 of Letters Patent, praying
to set aside the order and decretal order dated 21.09.2012
made in Appln. No.2736 of 2012 in C.S.No.494 of 2011.

For Appellant : Mr.K.Rajasekaran

For Respondent : Mr.Gladys Daniel for
Mr.C.Daniel

JUDGMENT

(Judgement of the Court was delivered by **S.NAGAMUTHU. J.)**

The appellant is the defendant in C.S.No.494 of 2011. The respondent, the sole plaintiff has filed the above said suit for permanent injunction restraining the defendant from manufacturing, selling, advertising and offering for sale using the trade mark "e2e eyes 2 eyes" upon the goods or in any media and use the same in advertising, marketing, distribution, etc. The appellant/defendant filed an application in Appln No.2736 of 2012 seeking rejection of the said plaint. That application was dismissed on 31.10.2013 by the learned single Judge. Challenging the same the defendant is now before this court with the present appeal.

2. We have heard the learned counsel for the appellant and the learned counsel for the respondent and we have also perused the records carefully.

3. The basic issue involved in the suit is whether there is similarity between the registered trade mark of the plaintiff and the trade mark used by the defendant. It cannot be decided in an interim application and the matter needs to be appreciated on evidence. This is the reason upon which the learned single Judge dismissed the application. Thus, we do not find any infirmity in the

said order warranting interference at the hands of this court and the appeal deserves only to be dismissed.

4. In the result, the original side appeal is dismissed, however, we request the learned single Judge to dispose of the civil suit at the earliest. Considering the claim made by both parties, they shall bear their own costs. No costs. Consequently, connected MP is closed.

(S.N., J.) (N.A.N. J.)
09..01..2017

kmk

S.NAGAMUTHU.J.,
AND
N.AUTHINATHAN.J.,

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