

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CIVIL MISCELLANEOUS APPEAL No.1294 of 2017

JUDGMENT:

Heard both sides in the appeal and perused the grounds urged in the appeal vis-à-vis the impugned order of the lower Court dated 04.10.2017 in I.A.No.208 of 2017 in O.S.No.254 of 2017 and also other material on record with reference to the plaint and counter to I.A.No.208 of 2017 filed by the respondent impugning the petition averments therein and also the expression of the Bombay High Court in **Parksons Cartamundi Private Limited Vs. Suresh Kumar Jasraj Burad**¹, where it is observed that pending registration of the trade mark under Section 45(1) of Trade Marks Act, 1999, an interim protection can be passed.

It is the contention of the learned counsel for the unsuccessful petitioner before lower Court/appellant herein that there is a letter of assignment that is referred in the plaint and relied in the injunction petition. The deed of assignments are in respect of trade mark and copy rights separately executed and for its registration it is applied under Section 45 of the Trade Marks Act with the Registrar of Trade Marks and Copy Rights respectively. Whereas it is the contention of the learned counsel for the respondent/defendant that there is embezzlement of funds while the petitioner was a distributor under the respondent and in the course of the distribution ship having gained some access, he has stolen blank signed letter heads of the Managing Director of respondent company by names Harish Gupta and Smt. Pratibha Devi Gupta W/o Harish Gupta, he might have forged

¹ 2012 Vol.114(4) Bom.L.R. 1991

assignment letters by issuing the same. Thereby on knowing these assignments were not registered with the Registrar of Trade Marks and Copy Rights respectively, he filed writ petition before the High Court referred in his counter directing the Registrar of Trade Marks and Copy Rights not to register any such assignment and he is also filed report before the police regarding the said fabrication of letter of assignments and the same is registered as crime No.90 of 2017, which is no doubt subsequent to the filing of the suit and the injunction petition and thereby the lower Court is right in dismissing the application for injunction.

In fact though the petition and counter refers documents and even the order of the lower Court at Para 11 refers about 12 documents filed by the petitioner and at Para 12 refers about 5 documents filed by the respondents and in the memo of evidence it is shown as no documents filed and these documents are required to be referred as exhibits at least for reference sake and in the impugned order there is no discussion and what is observed in Para 13 last line says the petitioner did not properly disclose the facts and it is nothing but suppression, which is not tenable as the question of disclosing the FIR, which is subsequent to the filing of the petition in the petition affidavit is impossible to conceive and once this is the procedure to be followed by exhibiting the documents for reference and to discuss the documents in arriving as to prima facie case, balance of convenience and irreparable injury lies in favour of the petitioner or not and even not entitled to injunction, any equitable order can be passed or not by imposing any terms that was not discussed in the order.

Having regard to the above, the Civil Miscellaneous Appeal is allowed and the impugned order is set aside with a direction to the lower Court and uninfluenced by the earlier order and this order to exhibit the documents placed reliance by both sides and pass order afresh independently after hearing both sides. Both parties are at liberty to file any written arguments before the lower Court.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 13.12.2017
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