

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 27th DAY OF SEPTEMBER 2018

THE HON'BLE MR. JUSTICE M.SUNDAR

A.No.6890 of 2018

in

C.S.No.301 of 2018

C.Prakash

Proprietor of M/s Sri Kumaran

CD Collection & Electronics

New No.3, Old No.8,

A R Cauvery Enclave, 3rd Street

Vadapalani, Chennai - 600 026

...Plaintiff

-Vs-

1.ZeeEntertainment Enterprise Limited

Continental Bldg.,135,

Dr.Annie Besant Road

P.B.Marg, Worli

Mumbai -400 018

2.Aiplex Software Private Limited

No.2943/E, 1st Floor, Opp.Maruthi Mandir

Service Road, Vijayanagar

Bangalore - 560 040

...Defendants

A.No. 6890/2018:

1.ZeeEntertainment Enterprise Limited

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Mumbai -400 018

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Service Road, Vijayanagar

Bangalore - 560 040

...Applicants/Defendants

-Versus-

C.Prakash
Proprietor of M/s Sri Kumaran
CD Collection & Electronics
New No.3, Old No.8,
A R Cauvery Enclave, 3rd Street
Vadapalani, Chennai - 600 026

....Respondent/plaintiff

Application praying that this Hon'ble Court be pleased to reject the plaint filed in C.S.(Comm.Div.)No.301 of 2018 with exemplary costs.b

This Application coming on this day before this court for hearing the court made the following order:

There is a sole plaintiff and there are two defendants in the main suit.

2.Defendants 1 and 2 in the main suit are applicants 1 and 2 respectively in the instant application i.e., Application No.6890 of 2018. Likewise, the sole plaintiff in the main suit is the sole respondent in the instant application.

3.Parties in this application are referred to by their respective ranks in the main suit for the sake of convenience and clarity. In other words, the 'applicants' in the instant application are referred to as 'defendants' and the 'lone respondent' in the instant application is referred to as 'plaintiff' for the sake of convenience and clarity.

4.Instant application has been taken out with a prayer for rejection of plaint *inter alia* under Order VII Rule 11 of 'The Code of Civil Procedure, 1908', which shall hereinafter be referred to as 'C.P.C.,' for the sake of brevity, convenience and clarity.

5.To be noted, Order VII Rule 11 C.P.C., consists of four sub-clauses i.e., (a) to (d). Clauses '(b)' and '(c)' are not available for being invoked in the jurisdiction of this Court in the light of Order XLIX Rule 3, sub-rule (1). That leaves us with Clauses '(a)' and '(d)'. The judges summons in the instant application does not specify the sub clause. However, from the submissions made before this Court, it is clear that this is an application under sub clause '(a)' of Order VII Rule 11 C.P.C. In other words, this is an application seeking rejection of plaint, on the ground that the plaint does not disclose a 'cause of action'. Learned counsel for defendants affirms this position. Therefore, I deem it appropriate to extract Order VII Rule 11 (a) C.P.C., and the same reads as follows:

'11. Rejection of plaint

The plaint shall be rejected in the following cases :-

- (a) where it does not disclose a cause of action;
- (b).....
- (c).....
- (d).....'

6. Before we look into this application for rejection of plaint and examine the merits of the instant application, it may be necessary to have a panoramic birds eye view of the factual matrix in the main suit, as it unfurls from the plaint averments. In other words, before I advert to the merits of this application, it may be necessary to set out a thumb nail sketch of facts in the main suit for the limited purpose of appreciating this order.

7. A perusal of the plaint reveals that the nucleus of the main suit is constituted by three Tamil cinematographic films with titles 'Haridas', 'Endrendrum Punnagai' and 'Yarukku Yaaro'. These three Tamil cinematographic films constitute the nucleus of the suit and for the sake of convenience, clarity and brevity, the same shall be collectively referred to as 'suit movies'.

8. It is the case of plaintiff that they have got assignment of rights in suit movies from the respective producers of the three cinematographic films which constitute suit movies. The details of assignment of rights have been articulated in paragraph No.7 of the plaint and the same reads as follows:

<i>Date of the Assignment</i>	<i>Assignor</i>	<i>Assignee</i>	<i>Title of the Cinematograph Film</i>	<i>Territory of Assignment</i>
04.09.2014	M/s.Ram Pictures Pvt. Ltd.	C.Prakash	"Haridas"	Entire World
17.12.2014	M/s.Tamilkumaran Production Pvt. Ltd.	C.Prakash	"Endrendrum Punnagai"	Entire World
20.12.2014	S.Balakrishnan	C.Prakash	"Yaarukku Yaaro"	Entire World

9.It is the further case of the plaintiff that defendants have issued a strike against the plaintiff's videos of suit movies. To be noted 'strike' in software parlance. The details of such strikes by the defendants qua suit movies in which the plaintiff claim rights have been articulated in paragraphs 11 and 12 of the plaint. As this is a rejection of plaint application, I deem it appropriate to extract both paragraphs and the same read as follows:

'11.The plaintiff is, therefore, the absolute and sole owner of all the copyrights in the subject films. To the utter shock of the plaintiff, on 14.04.2018, the 2nd defendant, on behalf of the 1st defendant issued a strike against the plaintiff's video of the subject film "Yarukku Yaaro" uploaded on www.youtube.com. The said video of the plaintiff was taken

down by YouTube Inc. as a result. Similarly, on 19.09.2017, the 2nd Defendant, again on behalf of the 1st defendant, issued a strike against the plaintiff's video of the subject film "Endrendrum Punnagai" uploaded on www.youtube.com. The said video of the plaintiff was also taken down by YouTube Inc. as a result. These strikes were made by the defendants on the plaintiff's videos on the ground that they are the owners of the subject films. However, as stated above, the plaintiff is the absolute and sole owner of all the copyrights in the subject films. Similarly, a strike was made by the respondents/ defendants on 19.09.2017 against the video of the film "Haridas" which resulted in the said film being taken down.

12. Further, on 23.04.2018, the plaintiff's channel on YouTube, named "New Tamil Movies" was taken down completely and all the content uploaded by the plaintiff has remained inaccessible as a result. This has occurred because of the repeated strikes issued by the defendants even without providing any proof to establish that they are the rightful owners of the subject films. These actions of the defendants have, therefore, cause grave prejudice to the plaintiff. The videos uploaded on YouTube is

a major source of revenue for the plaintiff. The plaintiff earns about \$6000 USD through his channel on YouTube every month. As a result of the plaintiff's channel being taken down, all the videos uploaded by the plaintiff have become inaccessible and this is not just limited to the subject films against which the strikes have been made.'

10. It is also the further case of plaintiff that the strike made by defendants qua suit films resulted in the same being taken down YouTube under its take down mechanism.

11. Plaintiff submits that aforesaid strike and consequent take down infringes their rights in suit movies and such strikes have caused loss to them. This is said to be the basis for the instant main suit or in other words, the 'cause of action' for the instant main suit. Plaintiff has laid the instant main suit with prayers for declaratory rights qua suit movies, quantified loss of revenue and future loss of revenue caused due to termination of YouTube Channel which in turn according to plaintiff is owing to aforesaid strikes. Usual prayer limbs for costs and a residuary limb also form part of the plaint prayer.

12. Considering the nature of submissions made in this reject the plaint application, I deem it appropriate to extract

the entire prayer paragraph which is paragraph 18 of the plaint and the same reads as follows:

'a. declaring that the plaintiff is the absolute legal owner of the copyrights in the Tamil cinematograph films titled "Haridas", "Endrendrum Punnagai" and "Yarukku Yaaro";

b. directing defendants to pay damages of Rs.53,426/- (Rupees Fifty Three Thousand Four Hundred and Twenty Six and Only) for loss of revenue caused to the plaintiff as a result of termination of his YouTube Channel titled "New Tamil Movies" for the period between 23.04.2018 and 26.04.2018;

c. directing the defendants to pay the plaintiff the entire revenue lost as a result of the termination of his YouTube Channel titled "New Tamil Movies" from the date of this suit till the date of decree along with interest;

d. awarding the plaintiff the costs of the present suit proceedings;

e. passing any other or further orders which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case, in favour of the plaintiff and against the defendants, in the interest of justice.'

13. In the light of the fact that this rejection of plaintiff application is predicated on the ground that plaintiff does not disclose a cause of action, it becomes absolutely essential to take a close look at the cause of action paragraph which is paragraph 16 of the plaint. Paragraph 16 of the plaint which is cause of action paragraph reads as follows:

'16. The cause of action first arose on 17.12.2014 and 20.12.2014, in Virugambakkam, Chennai, where the assignment agreements were signed by the plaintiff. The cause of action arose on all dates when the plaintiff made his content available on his YouTube channel. The cause of action arose on 19.09.2017 and 14.04.2018 when the defendants made a strike against the subject films uploaded by the plaintiff. The cause of action also arose on 23.04.2018 when the plaintiff's channel was taken down and made inaccessible and this cause of action is present and continuing.'

14. Therefore, in a nutshell, the suit pertains to declaratory relief qua suit movies and loss of revenue caused by the defendants' strikes qua suit movies resulting in termination of YouTube channel.

15. Before I continue my exercise of analysing the rival submissions, it may be necessary to set out two standard parameters / determinants which shall operate as litmus test for testing this application. One standard parameter is, this Court will look at plaint averments, i.e. uncontroverted plaint averments with a hood and admitted documents alone, as this is an application for rejection of plaint. In other words, no documents outside of the uncontravered averments in the plaint and plaint documents if any can be looked into. As mentioned supra, it has to be tested on a demurrer meaning, it should be tested assuming plaint averments to be true and correct. This position of law has been reiterated and repeatedly laid down in a long line of authorities and in my considered view, it would suffice to refer to the recent judgment of the Supreme Court in **Kuldeep Singh Pathania V. Bikram Singh Jaryal** reported in (2017) 5 SCC 345, where Hon'ble Supreme Court highlighted the well settled ratio that in Order VII Rule 11 of C.P.C., the Court should only look at the plaint and nothing else. It was specifically laid down by the Supreme Court that the Court can only see whether the plaint i.e. the pleadings of the plaintiff constitute a cause of action. Pleadings in the sense, where even after the stage of written statement and if there is a replication filed in a given situation, the same can also be looked into to see if there is any admission. In other words,

under Order VII Rule 11 of C.P.C., the Court has to take a decision looking at the uncontroverted pleadings of the plaintiff.

16.The second standard parameter pertains to 'cause of action'. No elaboration or explanation is required to say that 'cause of action' is not a term of art. In other words, it is not an expression / term, which has been defined in any Statute or Code. As 'cause of action' is not a term of art, one has to necessarily look at judicial pronouncements to understand what is 'cause of action'.

17.There are some expressions, terms and words which are difficult to define, but are capable of description. To my mind, 'cause of action' is one such term / expression and that, to my mind appears to be the reason as to why 'cause of action' has not been defined in any Statute or Code. In other words, it is my considered opinion that 'cause of action' as an expression and term is easy to describe, but difficult to define. Be that as it may, for clarity on what is 'cause of action', I deem it appropriate to refer to a judgment of Hon'ble Supreme Court in **Nawal Kishore Sharma v. Union of India** reported in (2014) 9 SCC 329. Relevant paragraph in **Nawal Kishore Sharma** case is paragraph 10 and the same reads as follows :

"10.In *State of Rajasthan v. Swaika*

Properties [(1985) 3 SCC 217] , the fact was that the respondent Company having its registered office in Calcutta owned certain land on the outskirts of Jaipur City, was served with notice for acquisition of land under the Rajasthan Urban Improvement Act, 1959. Notice was duly served on the Company at its registered office in Calcutta. The Company, first appeared before the Special Court and finally the Calcutta High Court by filing a writ petition challenging the notification of acquisition. The matter ultimately came before this Court to answer a question as to whether the service of notice under Section 52(2) of the Act at the registered office of the respondent in Calcutta was an integral part of cause of action and was it sufficient to invest the Calcutta High Court with a jurisdiction to entertain the petition challenging the impugned notification. Answering the question this Court held: (Swaika Properties case [(1985) 3 SCC 217] , SCC pp. 222-23, paras 7-8)

"7. Upon these facts, we are satisfied that the cause of action neither wholly nor in part arose within the territorial limits of the Calcutta High Court and therefore the learned Single Judge had no jurisdiction to issue a rule nisi on the petition filed by the respondents under Article 226 of the Constitution or to make

the ad interim ex parte prohibitory order restraining the appellants from taking any steps to take possession of the land acquired. Under sub-section (5) of Section 52 of the Act the appellants were entitled to require the respondents to surrender or deliver possession of the lands acquired forthwith and upon their failure to do so, take immediate steps to secure such possession under sub-section (6) thereof.

8. The expression 'cause of action' is tersely defined in Mulla's Code of Civil Procedure:

'The "cause of action" means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court.'

In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice under Section 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an

integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under Section 52(1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The Notification dated 8-2-1984 issued by the State Government under Section 52(1) of the Act became effective the moment it was published in the Official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur under Section 52(2) for the grant of an appropriate writ, direction or order under Article 226 of the Constitution for quashing the notification issued by the State Government under Section 52(1) of the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the

validity of the notification issued by the State Government of Rajasthan under Section 52(1) of the Act by a petition under Article 226 of the Constitution, the remedy of the respondents for the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose."

18. From the description of 'cause of action' supra, it can be gathered that cause of action is a bundle of facts and all and every fact in the bundle which constitutes a lis may not qualify as cause of action. However, those facts which in a long chain of facts which are imperative to be proved for the plaintiff to be entitled to a decree, go to constitute a cause of action.

19. On the above platform of two parameters, I now proceed to examine the instant application.

20. Mr. S. Diwakar, learned counsel for defendants submitted that the suit has been laid as one under Section 62 of the Copyright Act, 1957 (hereinafter referred to as 'said Act' for brevity) but in effect, it is not a suit for infringement and therefore, Section 62 of the said Act has no application. It is his specific say that the prayers in the suit adumbrated in

prayer paragraph of plaint (extracted and reproduced supra) and cause of action paragraph (also extracted and reproduced supra) would reveal that, what the plaintiff is praying in the instant case is effectively a declaratory prayer coupled with a claim of loss of profit and there is no complaint of infringement. It is his specific say that only when a suit qualifies as a complaint of infringement, the benefit of Section 62 of the said Act is available and only when Section 62 of the said act is available to a plaintiff, a suit of this nature can be instituted in this Court. Learned counsel made a specific reference to sub section 2 of Section 62 of the said Act but I deem it appropriate to extract entire Section 62 of the said Act which reads as follows :

'62. Jurisdiction of court over matters arising under this Chapter.—

(1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.

(2) For the purpose of sub-section (1), a "district court having jurisdiction" shall, notwithstanding anything

contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain.'

21.A perusal of subsection (2) of Section 62 of the said Act reveals that a suit should arise under Chapter XII of said Act and that it should either relate to infringement of copyright or infringement of any other right conferred under the said Act. Therefore there are three determinants / ingredients. One is, the suit should arise under Chapter XII. The second determinant is, it should pertain to infringement of a copyright and the third determinant is that, it should pertain to infringement or any other right conferred under the said act.

22.With regard to testing of a rejection of plaint application itself, I have borne in mind the time honoured well-established principle that a rejection of plaint application has to be tested on a demurrer, this Court is of the considered view that it is not just on demurrer, but on a

extreme demurrer, meaning it has to be tested by assuming all the averments in the plaint to be true and correct by looking at the plaint averments with a hood. To put it differently, it has to be tested on uncontroverted averments in the plaint without adding or subtracting the same by assuming that the averments are true and correct. I have borne this principle in mind in testing this rejection of plaint application. To be noted, this principle has been alluded to supra and some elaboration has been made.

23. Therefore, in the aforesaid aspect of the matter, I look into what exactly is the right which the plaintiff is claiming. It is plaintiff's specific say that the rights which plaintiff is claiming are rights in suit movies and these are rights in plaintiff's capacity as assignee under the said Act and for all practical purposes, it would be rights which the plaintiff has under Section 18 of the said Act. It has also been averred by the plaintiff that the rights of the plaintiff under Section 18 of the said act, are infringed not only under Section 51 of the said Act but also under Section 55 of the said Act. In this aspect of the matter, what is of relevance is while Section 51 of the said Act does not fall under Chapter XII, Section 55 of the said Act does fall under Chapter XII of said Act. Therefore, it is the specific say of the plaintiff that he is complaining of infringement / infarction of plaintiff's rights

under Section 18 of the said Act and the relief is being sought inter-alia under Section 55 of the said act as well as Section 51 of the said Act.

24. In this regard, it may be necessary to have a quick look at some definitions. Section 2 (y) of the said act defines 'work. 'Section 2 (f) of the said Act defines 'cinematograph film' and Section 14(d)(i) to (d)(iii) of the said Act talks about the meaning of copyright with particular reference to cinematograph films.

25. To be noted, in the instant case, subject matter is cinematograph film, i.e. suit movies and as mentioned supra, nucleus of the lis is constituted by three Tamil feature films i.e. suit movies. In this view of the matter, under Sections 2 (y), 2 (f), 14 (d) (i) to (iii) of the said Act assume relevance and significance. It is also to be noted that Chapter XII of the said act consists of 9 sections and those 9 sections are sections 54 to 62 of the said Act.

26. Now this takes us to a closer examination of Section 55 of the said Act. Section 55 of the said Act is captioned 'civil remedies for infringement of copyright'. The remedies available to a person complaining of infringement of copyright would be four in number. These four remedies are (i) injunction, (ii) damages, (iii) accounts and otherwise. Damages, i.e. loss of profit is one of the reliefs which the plaintiff has claimed and

I have alluded to the same supra. So far as the other relief is concerned, as mentioned supra, it is the case of the plaintiff that the strike made by the defendants qua suit movies is an infringement, qua plaintiff's right under Section 18 of the said Act and therefore, the declaratory relief which the plaintiff has sought qualifies and neatly fits in to the pigeonhole 'otherwise' occurring in Section 55 of the said Act.

27. Countering this, by way of reply, Mr.S.Diwakar, learned counsel submitted that the claim of declaration is one that has to be made under Section 34 of the Specific Relief Act, 1963 and it cannot be made in a suit under Section 62 of the said Act.

28. The question is declaration of rights seeking a declaration with regard to suit movies has become necessary because of the strikes which according to the plaintiff qualifies as infringement qua Section 51 of the said act entitling relief inter-alia under Section 55 of said Act. If that be the case, the question is, 'whether there are strikes under Section 51 of the said Act' and whether these strikes have given rise to a 'cause of action' to the plaintiff to lay the suit claiming declaratory relief, are matters which have to be gone into in trial. Particularly, these are matters which cannot be decided without oral and documentary evidence merely on affidavits and counter affidavits in an interlocutory application.

29.To be noted, this is not merely an Interlocutory Application but a reject the plaint application which has to be decided on an extreme demurrer. Therefore, the grounds available with regard to the rejection of plaint application are thinner and narrower in contradistinction to other Interlocutory Applications.

30.As I have alluded supra, though plaint has been tested on a demurrer, I tested even the rejection of plaint application itself on a demurrer solely as a matter of hypothesis. Assuming for a moment that there is no infringement of suit movies, the question is 'whether the plaintiff will be entitled to damages under Section 55 of the said Act for infringement of other rights conferred under the Act ?'. The right claimed by the plaintiff is essentially a right under Section 18 of the said act. To be noted for breach of provisions of said act, plaintiff would be entitled to other reliefs under Section 55 of the said act. A mere perusal of this aspect of the matter would reveal that these aspects can be clinchingly decided only in trial. In other words, oral and documentary evidence is imperative for finding an answer to these questions. Therefore, these are matters for trial. Besides this, one other submission which is of relevance is the first defendant has already filed a written statement on 23.08.2018. The written statement is dated 06.08.2018. A perusal of the written statement of the first

defendant reveals that the defendants are also claiming assignment in suit movies and it is defendants' emphatic say that their assignment is prior in point of time. I have already set out the details of assignment rights that are claimed by the plaintiff. A perusal of the plaint would reveal that the plaintiff has claimed assignment right in the year 2014 between the months September and December.

31. Per contra, according to defendants rights of assignment claimed by them are traceable to years 2008; 2012 and 2013. Therefore, it is necessary to answer all this one way or other, i.e. as to whether defendants have prior and better right qua suit. This aspect of the matter can be decided and tested only in trial. It cannot be decided on the basis of affidavits and counter affidavits, at this stage. As already mentioned supra, we have to remind ourselves that we are dealing with an application for rejection of plaint application where the scope is narrower and thinner in contradistinction to other interlocutory applications.

32. Interpretation of Section 62 of said Act leads us to the proposition that every suit or civil proceedings under Chapter XII of said Act, should be instituted in a District Court having jurisdiction and such suit or civil proceedings should be in respect of either a) infringement of Copyright in any work, or

b) infringement of any other right conferred by this Act.

33.It follows as a sequitur that a suit arising under Chapter XII can be in respect of infringement of any right conferred by this Act including rights other than infringement of Copyright. It follows as a further sequitur that a suit under Chapter XII of said Act is not restricted to a suit in respect of infringement of Copyright. In other words, it can also be a suit in respect of infringement of any other right conferred by the said Act. In this case, it is the case of the plaintiff that right conferred on the plaintiff *inter alia* under Section 18 of the said Act has been infringed by the plaintiff. It is the specific case of the plaintiff that such infringement by the defendants is by causing strikes in the YouTube and blocking / closing the channel qua suit movies. In other words, such infringement by defendants is by preventing the plaintiff from exhibiting the suit movies in which plaintiff has rights under Section 18.

34.It is to be noted that infringement is not a term of art in the said Act. Only 'infringing copy' is a term of art as the same has been defined in Section 2(m). As infringement is not a term of art, one has to look at Section 51, which goes by the caption 'When copyright infringed'. A reading of Section 51 reveals that copyright in a work shall be deemed to be infringed

when any person without licence or ownership in a work or in contravention of conditions of such licence does anything which only a owner of the copyright upon which such right is conferred by the said Act is entitled to do in law. According to plaintiff averments, by causing strikes in the YouTube and blocking exhibition of suit movies by closure of channel, defendants are doing acts for which exclusive rights have been conferred only on the plaintiff. In other words, it is the case of the plaintiff that they can cause strikes. Per contra, it is defendants' case that they have obtained assignment in suit movies prior to the plaintiff and therefore, the strikes which they have caused to be made in the YouTube and consequent blocking of exhibition of suit movies by plaintiff does not tantamount to infringement. Therefore, if the defendants are able to show that their strikes in the YouTube qua suit movies are pursuant to rights conferred upon by them by the owner of the copyright, the strikes will not qualify as infringement under Section 51 of the said Act.

35. On the contrary, if the defendants are unable to establish the same, the strikes will constitute infringement of plaintiff's copyright within the meaning of Section 51(a)(i). To answer this question, trial is necessary. Without oral and documentary evidence and without testing the six assignment

deeds (three filed by the plaintiff along with the plaint and three filed by the first defendant along with the written statement dated 08.08.2018) have to be proved in a manner known to law to decide who is vested with the right to cause these strikes. Without deciding this question, it is not possible to answer the question whether there is infringement within the meaning of Section 51.

36.To be noted, plaintiff has to necessarily establish that there was infringement by defendants within the meaning of Section 51 to succeed in the suit. Therefore, the factum regarding whether the strikes by the defendants tantamount to infringement is one of the important part of cause of action in this suit. Therefore, it cannot be gainsaid at this stage that the plaint does not disclose a cause of action. It does disclose a cause of action qua infringement. Whether plaintiff is able to establish and prove the same in a manner known to law is the moot question. That question can be answered only in trial and not in a reject the plaint application.

37.In the light of the narrative supra, I am of the view that the submissions raised by defendants would not be considered by this Court and such submissions have to be decided in the main suit.

38.Though obvious, for the purpose of abundant clarity, it is set out here that expression of opinions / observations made

in this order are only for the limited purpose of disposal of the instant rejection of plaint application and the main suit will be tried, tested and decided untrammelled by the observations made in the instant application.

39. This takes us to the stage of the suit. As already mentioned, the first defendant has filed a written statement on 23.08.2018 and completed the pleadings. The second defendant has filed a joint memo on the same day. Therefore, the defendants filed written statement and the next procedural steps as per amended C.P.C., as amended by the Commercial Courts Act, 2015 are, 'inspection of documents' followed by 'admission and denial' under Rules 3 and 4 respectively of Order XI of C.P.C. The parties will do well to complete this exercise within six (6) weeks from today, i.e. on or before 08.11.2018.

40. Thereafter, it would be appropriate to fast track the main suit by listing the main suit under the caption 'Case Management Hearing' ('CMH' for brevity). To be noted, CMH under Order XV-A of amended C.P.C., as amended by the Commercial Courts Act, 2015. To be noted, the written statement filed by the second defendant is accompanied by an application for condonation of delay in filing the same. Prayer in this application has been acceded to vide separate order made today and said written statement is taken on file.

41. In the light of all that have been set out supra,

instant application for rejection of plaint filed on the ground that the plaint does not disclose 'cause of action' is dismissed.

42.Considering the trajectory of the hearing, I am of the view that the parties should be allowed to bear their own costs for the present. In other words, the question of costs is left open to be decided in the main suit.

Sd/M.S.J
27.09.2018

//Certified to be a true copy//

Dated this the th day of 2018.

DL/30.10.2018

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