

\$~3

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(COMM) 595/2017 & IA Nos. 10349/2017 (u/O XXXIX R-1 & 2 CPC), 10350/2017 (u/O XI R-1 (4) CPC), 6436/2018 (of defendants for condonation of delay in filing application u/O VII R-11 CPC), 6437/2018 (of the defendants u/O VII R-11 CPC)

BAPTIST CHURCH TRUST ASSOCIATION & ANR Plaintiffs

Through: Mr Manik Dogra, Mr. Shashi
Shekhar, Advs.

versus

JAMES MASSEY & ANR

..... Defendants

Through: None

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

09.05.2018

1. The two plaintiffs, namely (i) Baptist Church Trust Association and (ii) Baptist Missionary Society Corporation, have instituted this suit against two defendants, namely (a) James Massey and, (b) Baptist Christians Trust Association, for permanent injunction restraining use of the mark Baptist Church Trust Association or BCTA with the logo identical to that of the plaintiffs and for ancillary reliefs.

2. The suit came up first before this Court on 8th September, 2017 when while issuing summons thereof, vide *ex parte* order dated 8th September, 2017, the defendants were restrained from using the trade mark Baptist Church Trust Association and the logo or any other mark deceptively similar to the name, mark and logo of the plaintiffs.

3. The defendant No.1 appeared through advocate before this Court on 9th October, 2017. The subsequent order dated 19th December, 2017 records that both the defendants had been served on 3rd October, 2017 and 27th September, 2017, respectively but had not filed written statements, though the counsel for both the defendants appeared on the said date. Vide subsequent order dated 16th March, 2018, the right of both the defendants to file written statement was closed and vide another subsequent order dated 26th April, 2018, the application of the defendants for condonation of delay in filing the written statement was dismissed.

4. The defendants have filed IA No.6437/2018 under Order VII Rule 11 of the CPC along with IA No. 6436/2018 for condonation of delay of 43 days in filing thereof.

5. The counsel for the defendants contends that the plaint is liable to be rejected because the suit had not been instituted on behalf of the plaintiff No.2 by a duly authorized person and it is also argued that the person who has instituted the suit on behalf of the plaintiff No. 2 already stood terminated from the employment of the plaintiff No. 2.

6. The aforesaid do not constitute grounds for rejection of plaint under Order VII Rule 11 of the CPC and the defendants, after closure of their right to file written statement, cannot in the garb of application under Order VII Rule 11 of the CPC take pleas as could have been taken in the written statement.

7. The only other argument is that the cause of action pleaded in

para 37 of the plaint is also a moonshine cause of action and in fact no cause of action has accrued to the plaintiffs.

8. The counsel for the defendants, in spite of repeatedly being reminded that he is arguing the application under Order VII Rule 11 of the CPC and cannot be permitted to argue on merits, has continued to do so.

9. The aforesaid also is not a ground for rejection of plaint.

10. IA No.6437/2018 invoking Order VII Rule 11 of the CPC is misconceived and IA No.6436/2018 and IA No. 6437/2018 are dismissed.

11. The counsel for the plaintiffs has argued (i) that the plaintiff

No.2 is the registered proprietor in U. K. of the logo  and the plaintiff No. 1 is the permitted user of the said logo in India, though not the registered user; (ii) that the defendant No.1 was earlier a director of the plaintiff No.1 and after ceasing to be a director of the plaintiff No.1, has established the defendant No. 2 Baptist Christians Trust Association and has adopted the name similar/confusingly similar to that of the plaintiff No.1 and logo identical to that of the plaintiffs and is thereby representing himself and the defendant No.2 to be the plaintiffs; the logos of the plaintiff No.2, plaintiff No.1 and the defendant No. 2 are as under:-





(iii) that the plaintiffs have sued for permanent injunction restraining passing off.

12. I have enquired from the counsel for the plaintiffs as to how the plaintiffs can have exclusive right to the words 'Baptist' or to the word 'Church' or to the word 'Trust' or to the word 'Association'.

13. The counsel for the plaintiffs states that the plaintiffs are not claiming right to any of the said words but the plaintiff No.1 is known by its acronym BCTA and the defendant's by adopting the name Baptist Christians Trust Association are also using the same acronym BCTA, to derive undue advantage of the past association of the defendant No.1 with the plaintiffs.

14. The plaintiffs, on the aforesaid facts, can only be entitled to



restrain the defendants from using the logo and from using a name with the acronym BCTA but cannot restrain the defendants from using the words 'Baptist' and/or 'Church' and/or 'Trust' and/or 'Association' in their name.

15. In view of the aforesaid state of affairs, need to relegate the plaintiffs to lead *ex parte* evidence is not felt.

16. A decree is passed, in favour of the plaintiffs and against the defendants, of permanent injunction restraining the defendants from



using the logo or from using a name with the acronym BCTA but with the clarification that the defendants do not stand restrained from using the words 'Baptist' and/or 'Church' and/or 'Trust' and/or 'Association' in their name.

17. Considering the nature of activities of the defendants, the plaintiffs would not have any claim for damages or rendition of accounts against the defendants and I hope that the defendants will not perpetuate the litigation further. I also refrain from imposing any costs on the defendants.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J.

MAY 09, 2018

SRwt..