

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 12TH DAY OF FEBRUARY 2019

THE HON'BLE MR. JUSTICE S.VAIDYANATHAN

A. No.1183 of 2019

in

C.S.Diary No.3753 of 2019

1.Retail Royalty Company
101 Convention Center Drive
Las Vegas, Nevada 89109
United States of America
Represented by its Power of Attorney
Mr.Shashi Chaudhri

2.AEO Management Co
77 Hot Metal Street, Pittsburgh
Pennsylvania 15203
United States of America
Represented by its Power of Attorney
Mr.Shashi Chaudhri

...Applicants/Plaintiffs

-Vs-

1.B V Quality Certification Private Limited
Plot No.44, Door No.6
4th Cross St NGO Colony
Adambakkam, Kancheepuram
Chennai - 600 088.

2.Kesharia Agencies (Madras)
129/271, Thanmbu Chetty Street
Parrys, Chennai - 600 001.

...Respondents/Defendants

Application praying that this Hon'ble Court be pleased to permit joinder of causes of action in respect of infringement of trademark, infringement of copyright as well the tort of passing off in a single suit.

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

The present Application has been filed seeking to permit joinder of causes of action in respect of infringement of trademark, infringement of Copyright as well as the tort of passing off in the suit.

2. Learned counsel for the Plaintiffs submitted that the Defendants have been actively carrying on their business in Chennai by infringing upon the intellectual property of the Plaintiffs. In support of his case, learned counsel has relied on a decision of this Court rendered in the case of **Brooke Bond India Limited, Calcutta vs. Balaji Tea (India) Pvt. Ltd., Raipur** in O.S.A.Nos.278 and 279 of 1989, decided on 25.11.1992, wherein, in paragraph 21, it is held as under:

"21. We have no reasons to think that if the law permits a person to institute a suit at a forum of his choice and that person exercises his discretion and chooses a particular Court for action, he abuses the process of the Court. Learned Single Judge has noticed and rightly said that Section 62 of the Copyright Act permits a deviation from the general law. But then, that gives a discretion to the litigant to decide the forum. It is his choice and not the choice of the Court. No exception can be taken if his discretion is not to the liking of the Court. Learned single Judge has in this behalf said at quite few places in his judgment that the Court may not in such cases be in a position to dismiss the suit as not

maintainable or is one filed in a Court without jurisdiction, yet has said, 'but the Court will certainly refuse to grant relief to him'. We are recording our disagreement. No Judge can afford to deny a relief if in law and in equity such relief is available to a party, evidently not for the reason that he does not like the choice of the forum and the action in Court by a litigant. Since we have taken the view that the copyright action emerges from the same bundle of facts from which the trade mark and passing off actions emerge and copyright action is maintainable in this Court (learned Single Judge has also so found), we are of the opinion that it will not serve the ends of justice, if leave is refused for joinder of causes of action falling under the Copyright Act and the Trade and Merchandise Marks Act."

3. On a perusal of the plaint, it is seen that there appears an infringement of the Plaintiffs' Copyright and Trademark by the Defendants herein. In view of clause 14 of the Letters Patent Act and in view of the above decision of this Court, this **Application is ordered, as prayed for.**

सत्यमेव जयते

Sd./- S.V.N.J.

12.02.2019

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Dated this the day of 2019.

DL/14.02.2019

COURT OFFICER

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