

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.10.2019

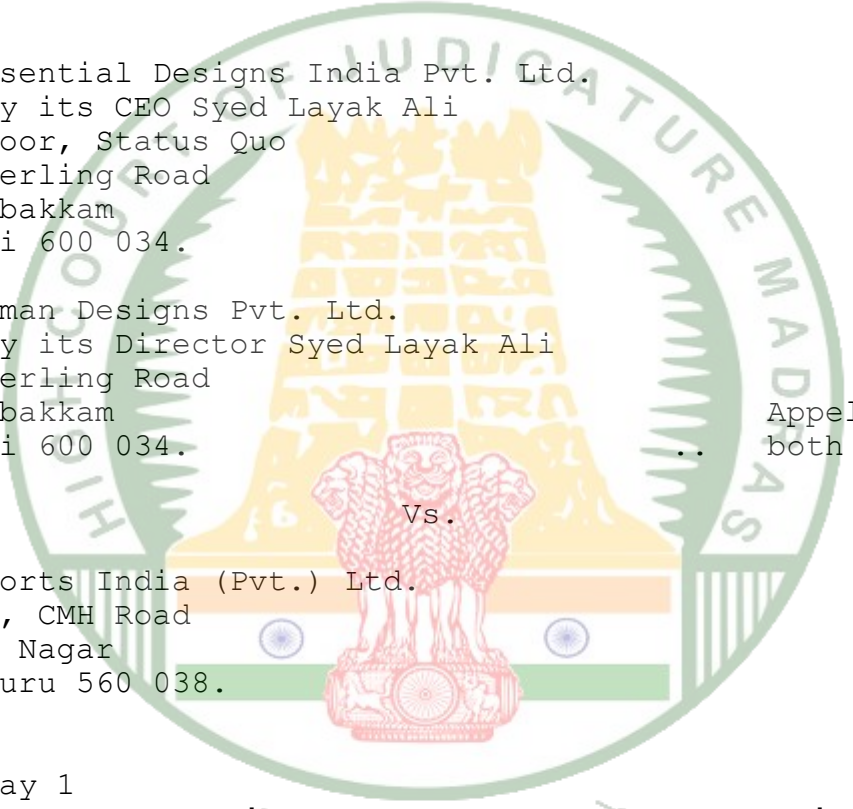
PRONOUNCED ON : 31.10.2019

CORAM

THE HON'BLE DR.VINEET KOTHARI, ACTING CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE C.SARAVANAN

OSA Nos.261 & 268 of 2019

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1. Quintessential Designs India Pvt. Ltd.
rep. by its CEO Syed Layak Ali
5th Floor, Status Quo
38, Sterling Road
Nungambakkam
Chennai 600 034.
2. QDSeatoman Designs Pvt. Ltd.
rep. by its Director Syed Layak Ali
38, Sterling Road
Nungambakkam
Chennai 600 034. Appellants in
both OSAs
- Vs.
1. Puma Sports India (Pvt.) Ltd.
No.509, CMH Road
Indira Nagar
Bengaluru 560 038.
2. PUMA SE
PUMA Way 1
91074 Herzogenaurach
Germany. Respondents in
both OSAs
- सत्यमेव जयते

Appeals under Order XXXVI Rule 9 of Original Side Rules
read with Clause 15 of the Letters Patent, against the common
order dated 29.01.2019 in A.Nos.5586 and 5585 of 2017
respectively, in C.S.No.215 of 2015, on the file of this Court.

For Appellants : Mr.AR.L.Sundaresan, Senior Counsel
For M/s. Nithyaesh and Vaibhav

J U D G M E N T

The Hon'ble Acting Chief Justice

The appellant M/s. Quintessential Designs India Pvt. Ltd., is aggrieved by the order dated 29.01.2019 passed by the learned Single Judge during the trial of C.S.No.215 of 2015 - M/s. Quintessential Designs India Pvt. Ltd. v. Puma Sports India (Pvt.) Ltd. and another in Application Nos.5585 & 5586 of 2017 filed by plaintiffs/appellants under Order XI, Rule 1 read with Order XVI Rule 1 of CPC, to permit the plaintiffs / applicants to deliver the interrogatories to the respondents to answer and to issue Sub-poena to the respondents/ defendants.

2. The learned Single Judge however rejected these applications by the common order dated 29.01.2019 giving the following reasons in the said order:

"52. A thorough examination of rival submissions reveals that plaintiffs are unable to show any changed circumstances which have changed post 26.09.2016. To go a step further, plaintiffs have not been able to show that there are any changed circumstances after 18.02.2016, i.e., after first order of Hon'ble Division Bench in intra court appeals where time lines were drawn up. To be noted, 'changed circumstances'; necessitating subpoena and interrogatories applications or in other words, circumstances which did not exist on 18.02.2016 or on 26.09.2016.

53 When plaintiffs by their own volition (to be noted when CMH of said Act was not operating in this Court) had agreed for expediting the trial by agreeing for time lines for every step and stage of the trial, there is nothing to show that the same was done without giving a thought to the present interrogatories and subpoena applications. Further more, the present interrogatories and subpoena applications alone are not interlocutory applications that have been filed after the orders of Hon'ble Division Bench. As alluded to supra, a barrage of applications had been filed. As plaintiffs by

their own volition had agreed for expediting trial and time lines, an extremely heavy burden is cast on plaintiffs to demonstrate and convince the court that there were changed circumstances which have necessitated filing of instant applications. In the alternative, plaintiffs should at least be able to show that there was some impediment or some thing that prevented plaintiffs from visualizing the need and necessity qua the present interrogatories and subpoena applications being perceived at the time of agreeing to time lines before the Division Bench. In this view of the matter, a strong and emphatic submission made on behalf of defendants is that plaintiffs, after agreeing for time lines before Division Bench not once, but twice and even after Division Bench expressed its anguish about time lines not being adhered to and reiterating that the main objective was to expedite the trial, are filing barrage of applications only with the intention of delaying and if possible derail the trial. To buttress this emphatic submission, it is strongly reiterated that plaintiffs are having interim orders that have been absolute (interlocutory applications) in their kitty and these applications are being pressed into service to extend the benefit of these orders to the longest possible period of time.

54. A judgment of Hon'ble Supreme Court in Ramrameshwari Devi Vs. Nirmala Devi reported in (2011) 8 SCC 249 can be referred to for stressing the importance of proceeding with the trial in the main suit once interim orders are granted. Hon'ble Supreme Court in paragraph 46 held as follows :

46. It is also a matter of common experience that once an ad interim injunction is granted, the plaintiff or the petitioner would make all efforts to ensure that injunction continues indefinitely. The other appropriate order can be to limit the life of the ex parte injunction or stay order for a week or so because in such cases the usual tendency of unnecessarily prolonging the matters by the plaintiffs or the petitioners after obtaining ex parte injunction orders or stay orders may not

find encouragement.?

55 A further careful analysis of the dynamics and dimensions of these two applications reveal that no prejudice or hardship would be caused to plaintiffs as it is always open to them to canvass that adverse inference should be drawn if defendants withhold best evidence or if the witness who ought to have been examined does not enter the witness box. It is clear that this should have been the thought while agreeing for time lines before Division Bench.

56 It is also to be noted that defendants even stretched their arguments and went as far as saying that they would not have agreed for time lines if plaintiffs had made it clear that such a course will be adopted in the suit.

57 This Commercial Division is of the considered view that it is high time that time lines adumbrated in the two orders of Hon'ble Division Bench dated 18.02.2016 and 26.09.2016 are adhered to in letter and spirit by concluding the trial before the Commissioner and having final arguments in the main suit heard out before the learned Single Judge (this Commercial Division) without any further loss of time.

58 The question of costs of these two applications is left open to be decided in the main suit.

59 Owing to all that have been set out above and in the light of the narrative / discussion supra, both applications, i.e., interrogatories application and subpoena application being A.Nos.5585 and 5586 of 2017 fail and are dismissed." (emphasis supplied)

3. The learned Senior Counsel, Mr.AR.L.Sundaresan, submitted before us that in the trial of the aforesaid suit filed for the alleged violation of copyrights of the plaintiffs, the Division Bench of this Court has already passed two orders, the first on 18.02.2016 in OSA Nos.215, 216, 235 to 237 of 2015 - M/s. Quintessential Designs India Pvt. Ltd. v. Puma Sports India (Pvt.) Ltd. and again on 26.09.2016 in Contempt Petition Nos.2077 to 2079 of 2016. He submitted that the suit was at the stage of evidence of the defendants and plaintiffs' evidence was over. But, in paragraph 10 of the order dated 26.09.2016 passed by the Division Bench of this Court, the application filed by the plaintiffs/applicants for alleged perjury against the respondents was directed to be tried with the main suit.

4. The learned Senior Counsel further submitted that filing of the interrogatories at this stage also is not likely to delay the trial further and certain facts will be clarified, which will assist the Court for arriving at the truth in the present case, which will subserve the ends of justice and therefore, the said applications deserve to be allowed and the learned Single Judge has erred in dismissing these two applications, which order is required to be interfered with in the present appeal.

5. Having heard the learned Senior Counsel and having perused the records, we are of the considered opinion that the present Original Side Appeals have no merit and deserve to be dismissed.

6. From the below extracted portions of the order passed by the Division Bench earlier and the aforesaid portion of the impugned order of the learned Single Judge, we are clear that the plaintiffs/applicants are trying to only dislocate and delay the trial by filing such applications at the highly belated stage, after the trial has commenced in the suit and the plaintiffs' evidence was over and the timeline set for the trial of the said case, as agreed between the parties and as directed by the Division Bench of this Court, is sure to be derailed by filing such frivolous applications at the belated stage, even for rejection of which the Court takes its own time.

7. The provisions of Civil Procedure Code allowing the filing of such interrogatories are incorporated in Order XI Rule 1, to facilitate the settling of the issues between the parties upon clarification of certain facts at the initial stage of suit and therefore, this exercise can be undertaken only before the commencement of the trial, with the framing of issues under Order XIV, Rule 1, CPC. The same cannot be allowed at the middle stage of the trial, as the material gathered upon such interrogatories is likely to give rise to additional issues and pleadings and additional defence requiring amendment of pleadings on both sides, which will put back the clock of trial back to stage one. Therefore, the learned Single Judge was perfectly justified in rejecting the said applications at the said belated stage.

8. A learned Single Judge of Rajasthan High Court in Govind Narayan v. Nagendra Nagda [MANU/RH/0832/2017 = 2017 (4) RLW 3309 (Raj.)], held as under and with which we respectfully agree:

"23. A reading of the provisions aforesaid, in light of judgments of various High Courts and Supreme Court reveals that the whole purpose of

interrogatories is to seek admission of a party on matter in dispute so that the issues can be accordingly framed, minimizing the contentious issues or disputes left for the adjudication of the Court, with the ultimate object of facilitating an early and expeditious disposal of the suit.

24. It is needless to point out that the purpose of providing the procedure of discovery by interrogatories in the Code of Civil Procedure is to shorten the litigation or at least save the time and expenses connected therewith. It enables a party to obtain an admission from the opponent which renders his burden of proof a bit lighter.

25. The second proviso to Rule 1 of Order XI uses the expression "matters in question", which expression has its own significance and importance. The expression "matters" means a question or issue in dispute or in action and not the thing about which such dispute arises. The object of introducing this provision appears to (15 of 23) [CW-7803/2016] secure all material documents and to put an end to lengthy enquiry with respect to document/material in possession of the other party. In such situation however, no adverse inference can be drawn against a party for non-production of the document, unless a notice is served and procedure followed.

...
47. The stage of the suit is a very significant aspect to be borne in mind, while deciding an application admitting or permitting interrogatories. As stated above, the whole idea or purpose of the provisions contained in Order XI Rule 1 of the Code is to save time and cost by confining the controversy or narrowing down the points of differences or disputes. Hence, the Court can be a bit liberal in admitting the interrogatories at the initial stage of a suit but the same standards cannot be applied at the advanced stage of the trial; when the evidence of the parties has begun. Interrogatories cannot be permitted, once the evidence of the concerned opposite party is over."

9. It appears that since the plaintiffs/applicants secured an interim injunction against the defendants and in order to

prolong the trial now, the plaintiffs have filed a barrage of applications as noted by the learned Single Judge and these applications under Order XI, Rule 1, CPC, at the belated stage, the net result of which is nothing but to delay the trial further. The interrogatories at this stage of defendants' evidence cannot be permitted to either strengthen the case of the plaintiffs or weaken the case of the defendants at a later stage, after the commencement of the trial. The parties had agreed to the timeline for expeditious trial of the suit before the Division Bench of this Court, which by the special law of Commercial Courts Act enacted by the Parliament in the year 2015, undoubtedly envisages an expeditious and time bound trial of the suits. Such an agreement between the parties, including an offer made for settlement of dispute through a mediation process, is clearly indicated in the orders passed by the Division Bench of this Court on 18.02.2016 and 26.09.2016. The relevant portion of which are quoted below for ready reference.

10. The relevant portion of the order dated 18.02.2016 made in OSA Nos.215, 216 & 235 to 237 of 2015, reads as under:

"We have heard learned counsel for parties.

On instructions from the respective parties, the following agreed order is passed:

1. The common additional affidavit filed by the appellants affirmed on 16.02.2016 stands withdrawn unconditionally expressing regret for the same;

2. The interim order passed would remain in force till the decision post trial, subject to the caveat that the existing stock, which has been permitted to be sold, of the original defendants which now still remains is stated to be in the range of about 25, which can be sold, but accounts have been kept and are being maintained by the original defendants in respect of the same;

3. The observations made in the impugned order are naturally tentative in character being at the interlocutory stage and no evidence having been led. They must certainly not affect the final verdict in the suit;

4. In order to proceed expeditiously in trial, it was found that even the written statement has not been filed as yet. The defendants to file their written statement within one (1) week. The replication thereto be filed within three (3) weeks;

5. The original documents will be filed by

the parties in their possession within six (6) weeks;

6. The suit be listed before the learned Single Judge for framing of issues on 07.04.2016;

7. The case shall be listed before the learned Master for exhibiting of documents on 21.04.2016;

8. In view of the fact that the Boards of the Masters is already heavy, the trial be recorded by a retired Judicial Officer with a cost to be borne equally by both the parties. Mr.V.Ramamurthy, former Registrar-Judicial of this Court, is appointed as the Commissioner to record evidence and the fee of the Commissioner will be Rs.1,00,000/- (Rupees one lakh only) apart from out-of-pocket expenses. The Commissioner will endeavour to conclude the evidence at the earliest, preferably within three (3) months from the first date fixed before the Commissioner, as it is stated that the parties will have about two witnesses each;

9. On conclusion of trial, the matter will be placed before the learned Single Judge for fixing a date for final hearing of the suit." (emphasis supplied)

11. The relevant portion of the latter order dated 26.09.2016 made in Contempt Petition Nos.2077 to 2079 of 2016, reads as under:

"6. We, thus, permit the amendment to the plaint to be carried out within a week, subject to payment of costs of Rs.10,000/- (Rupees ten thousand only) to the defendants within the same period.

7. The additional written statement confined to the aforesaid aspect is permitted to be filed within two (2) weeks thereafter.

8. We do not want the original scheme of things to be diverted, i.e. expeditious trial of the matter. The plaintiffs have not filed affidavits of evidence before the Local Commissioner. The affidavits will be filed within two (2) weeks, failing which the interim order in favour of the plaintiffs would stand vacated.

9. We are not inclined to pass any further directions as prayed for in the applications.

10. At this stage, it is pointed out that there is one more application filed by the

original plaintiffs for perjury. That will be tried with the main suit." (emphasis supplied)

12. At this juncture, it would be apt to refer to the decision of the Apex Court in *Ramrameshwari Devi v. Nirmala Devi* [(2011) 8 SCC 249], wherein, the Apex Court has held as under:

" 52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed? In our considered opinion the existing system can be drastically changed or improved if the following steps are taken by the trial courts while dealing with the civil trials.

A. Pleadings are foundation of the claims of parties. Civil litigation is largely based on documents. It is the bounden duty and obligation of the trial judge to carefully scrutinize, check and verify the pleadings and the documents filed by the parties. This must be done immediately after civil suits are filed.

B. The Court should resort to discovery and production of documents and interrogatories at the earliest according to the object of the Code. If this exercise is carefully carried out, it would focus the controversies involved in the case and help the court in arriving at truth of the matter and doing substantial justice." (emphasis supplied)

13. The Rajasthan High Court, in *Sandeep Grover v. Priyanka Batra* [Civil Writ Petition No.12425 of 2015 dated 31.10.2015], following the decision of *Ramrameshwari Devi supra*, held as under:

" ... The delays in trial of civil suits are notorious and so noticed by the Hon'ble Supreme Court in the case of *Ramrameshwari Devi (supra)*, where as a curative measure it has inter alia been suggested that the trial court should resort to discovery and production of documents and interrogatories at the earliest (emphasis mine). It would be well to note that in the case at hand the written statement by the defendant was filed about 3 years of the filing of the plaint despite service of summons and interrogatories sought by

the defendant after about four years thereafter on 18-8-2015, during which period the defendant actively pursued various other miscellaneous applications before the trial court in the suit in issue.

I find no force in the submission of Senior Counsel for the defendant that an application for interrogatories under Order 11 Rule 1 CPC should be allowed even after framing of issues, merely because such situation obtaining was not adversely commented upon by the Hon'ble Supreme Court in the case of Raj Narain Vs. Indira Nehru Gandh [AIR 1972 SC 1302]. It is well settled that every fact in a decision of the Supreme Court can not partake the character of a ratio decidendi with binding precedential value. For a binding ratio, the enunciation of law attributed to the Apex Court should have been specifically set out before the court, argued and conclusions arrived thereon on reasons recorded by the Apex Court. In the case of Fida Hussain Vs. Moradabad Development Aauthority [(2011)12 SCC 615] the Hon'ble Apex Court reiterated that only the principles of law that emanate from the reasoning in a judgment of the Hon'ble Supreme Court, having binding precedential value. In the aforesaid judgment relied upon by the counsel for the defendants, no ratio can be found that an application under Order 11 Rule 1 CPC can be filed subsequent to framing of issues, after an inordinate delay." (emphasis supplied)

14. In view of the aforesaid legal position, we are of the clear opinion that the order of the learned Single Judge dated 29.01.2019 is not required to be interfered with and the present appeals of plaintiffs are found to be devoid of any merit and the same are liable to be dismissed and accordingly, the appeals are dismissed. No costs. Consequently, CMP Nos.21856 and 22064 of 2019 are also dismissed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

kpl

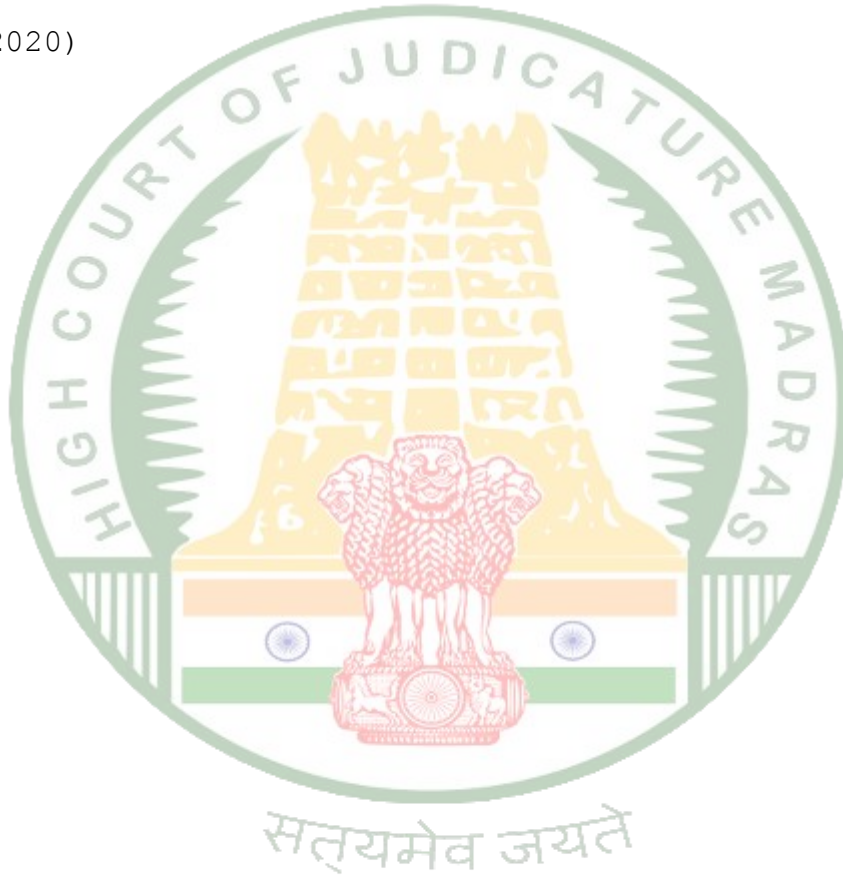
To

1.The Sub Assistant Registrar,
Original side,
High Court, Madras.

+1cc to M/s.Nithyaesh, Advocate SR.90182

Judgment in
OSA Nos.261 & 268 of 2019

CNR (CO)
CB (22/01/2020)



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