

Application No.3513 of 2019

in

C.S.No.302 of 2019

S.VAIDYANATHAN,J.

The present Application has been filed seeking to grant leave to the Applicants/Plaintiffs to file a single suit for joiner of cause of action in respect of infringement of registered trade mark and passing off together in a single suit.

2. Learned counsel for the Applicant/Plaintiff submitted that in order to avoid multiplicity of proceedings, the Plaintiff is filing a combined Suit for infringement of Trademark and passing off and that no prejudice would be caused to the Defendant, if permission is granted to combine the cause of action.

3. At this juncture, it is worth referring to the decision 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

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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."

4. On a perusal of the plaint, it is seen that there appears an infringement of the Plaintiffs' Trademark and passing off by the Defendant 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.

30.04.2019

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